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MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
PERMITTING AND ENFORCEMENT COMMITTEE

JOE SERNA, JR., CALEPA BUILDING
1001 I STREET
2ND FLOOR
COASTAL HEARING ROOM
SACRAMENTO, CALIFORNIA

MONDAY, FEBRUARY 6, 2006
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CERTIFIED SHORTHAND REPORTER
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Ms. Rosalie Mulé, Chairperson

Ms. Cheryl Peace

Ms. Pat Wiggins

ALSO PRESENT

Ms. Margo Brown

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Mr. Elliott Block, Acting Chief Counsel

Mr. Howard Levenson, Deputy Director

Ms. Angela Basquez

Mr. Michael Bledsoe, Staff Counsel

Mr. Mark de Bie, Manager, Permitting & Inspection Branch

Mr. Willy Jenkins

Ms. Beatrice Poroli, Permitting and Inspection Contact

Ms. Virginia Rosales

ALSO PRESENT

Mr. Lori Braunesreither, LEA, Contra Costa County

Mr. Stan Chau, LEA, Santa Clara County

APPEARANCES CONTINUED

Mr. Chip Clements, Sun Valley Paper Stock

Mr. Evan Edgar, California Refuse Removal Council

Mr. Steve Engfer, Mariposa County Solid Waste and Recycling

Mr. George Eowan, Consultant

Mr. Al Lopez, Lopez Agricultural Service

Mr. Justin Malan, Local Environment Health Directors

Mr. Paul Nuti, Republic Services

Mr. Greg Pirie, LEA, Napa County

Mr. Scott Smithline, Californians Against Waste

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 CHAIRPERSON MULÉ: Good morning, everyone. Good
3 morning. Welcome to the February 6th meeting of the
4 Permitting and Enforcement Committee.

5 First of all I just want to welcome Pat Wiggins,
6 our board member, as a permanent member of our committee.

7 Welcome, Pat.

8 And also I would like to welcome Margo Brown, our
9 newest board member.

10 Welcome.

11 And Margo will be sitting with us at all our
12 committee meetings this week, so thank you so much for
13 being here. And welcome. We are thrilled to have you
14 here. Thank you.

15 There are agendas on the back table, so if anyone
16 would like to speak to an item, please fill out a form and
17 bring it up to Donnell here.

18 Also I would like to ask everyone to either turn
19 off or put your pagers and cell phones in the silent mode.

20 And Donnell, would you please call the roll,
21 please.

22 SECRETARY DUCLO: Members Peace?

23 COMMITTEE MEMBER PEACE: Here.

24 SECRETARY DUCLO: Wiggins?

25 COMMITTEE MEMBER WIGGINS: Here.

1 SECRETARY DUCLO: Chair Mulé?

2 CHAIRPERSON MULÉ: Here.

3 Members, do you have any ex-partes to report?

4 COMMITTEE MEMBER PEACE: I do.

5 I spoke briefly to Chuck Helgut on the Lopez Ag
6 Services, Item Number 20.

7 COMMITTEE MEMBER WIGGINS: Okay. I'm up to date.

8 CHAIRPERSON MULÉ: And I'm up to date as well.

9 Thank you.

10 Okay. First we are going to have our Deputy
11 Director's Report.

12 Mr. Levenson, if you would like to start.

13 DEPUTY DIRECTOR LEVENSON: Thank you, Madam Chair,
14 and good morning, Board Members.

15 I'm Howard Levenson, Deputy Director for
16 Permitting and Enforcement.

17 I'm going to provide you, as part of my Deputy's
18 Report, with an update on a couple of the action plans
19 that the Board set in motion about a year ago now.

20 To start that off, though, I'm going to turn it
21 over to our Executive Director Mark Leary for introducing
22 that update.

23 (Thereupon an overhead presentation was
24 presented as follows.)

25 EXECUTIVE DIRECTOR LEARY: Thank you, Howard.

1 Good morning, Members. Good morning, Madam Chair.

2 I would like to just very briefly put Howard's
3 update into context.

4 As you remember, I promised, as part of my
5 accomplishments report last month, an update on progress
6 we've made in the action plans, and I promised a more
7 detailed presentation as part of the committees this
8 month.

9 So in that light you will recall, well, two of you
10 will recall -- well, two of you will recall. Two of you,
11 as this is a new subject to.

12 But the Board took it off site last January and
13 discussed among themselves some target priority areas.
14 And among the six priorities they identified as part of
15 that getaway was green procurement -- as you can see on
16 the slide -- market assessment, technology assessment,
17 universal waste, alternative measurement, and training and
18 enforcement.

19 Next slide please, Sue or Donnell. Next slide,
20 please.

21 --o0o--

22 EXECUTIVE DIRECTOR LEARY: There we go. So as a
23 result of that direction in January, we have over the last
24 12 months formed teams around these action plans. We've
25 added a critical component to several of the action plans,

1 of course is the award of the Ogilvy contract to help us
2 in our interactions with some of our target audiences.

3 And then as part of this month and these
4 committees, each deputy director will report on an update.
5 We've made some significant progress on some of the action
6 plans, some probably not as aggressively or not as far
7 along as we would have liked to have been at this point.
8 But I still think we're performing strongly in respect to
9 all of the action plans, and I look forward to any
10 response, any comments you would like to offer here today.

11 And I think as we contemplate having another
12 off-site meeting among ourselves, maybe later this month,
13 this will provide the foundation for some of the
14 discussion that will occur then.

15 So with that, Madam Chair, I will turn it back
16 over to Howard.

17 CHAIRPERSON MULÉ: Great. Thank you, Mark.
18 Howard.

19 DEPUTY DIRECTOR LEVENSON: Thank you, Mark.

20 And if I could have the other PowerPoint up,
21 please.

22 (Thereupon an overhead presentation was
23 presented as follows.)

24 DEPUTY DIRECTOR LEVENSON: What I would like to do
25 this morning as part of my Deputy Director's Report is a

1 brief update on two particular action plans. One is
2 enforcement and training. And the other is kind of the
3 emerging technologies action plan, and I will be fairly
4 brief about these and certainly be open to any follow-up
5 questions and providing you more information.

6 Before I do that though, I do want to give you a
7 sense of all the things that the Permitting and
8 Enforcement Division does on a more daily basis.

9 You know, we have a great P&E staff, and they do a
10 lot of things that really aren't recognized, kind of
11 behind the scenes, the normal bread-and-butter activities
12 that the Board undertakes -- and I don't need to go
13 through this slide in great detail -- but we do a lot in
14 terms of getting solid waste facility permits ready for
15 you, and a lot of back and forth goes into that.

16 We conduct our own statutorily mandated
17 inspections of all landfills. Acting as the enforcement
18 agency, we conduct our own site inspections. As you can
19 see, we trained over 1100 people last year and so on.
20 Cleanup is a huge part of our programs. Regulatory
21 packages, which you have heard some about and will
22 continue to hear about -- our initiative always comes
23 before the Board.

24 --o0o--

25 DEPUTY DIRECTOR LEVENSON: We also handle all the

1 financial assurance mechanisms for landfills and including
2 disbursements or authorizing disbursements of funds from
3 those financial assurance mechanisms. And we had a
4 workshop on that, on an issue related to that, about two
5 weeks ago.

6 Also little known is that we do represent the
7 Board on CalEPA's Emergency Response Management Action
8 Committee. God forbid that there's a disaster that we have
9 to respond to but are we on that committee and ready to go
10 into action if needed at the State Operations Center and
11 some of the other centers around under the auspices of the
12 governor's Office of Emergency Services.

13 Our work in this has become more and more
14 complicated over the last few years on all these
15 activities. We have an increasing number of operations
16 and facility categories that we regulate. We have more
17 facilities. Things are more complex as urban development
18 encroaches on existing facilities or people trying to site
19 new facilities in the midst of development just becomes
20 more and more complicated.

21 We also have increasing demands for the clean up
22 of illegal dumping, which we have started to work on this
23 year.

24 So there's a lot of things going on in P&E, but
25 let me now turn to the two action plans.

1 --o0o--

2 DEPUTY DIRECTOR LEVENSON: First is the
3 enforcement and training action plan, and this has a
4 twofold intent. One is to enhance the Board's and LEAs'
5 abilities to take more effective enforcement when
6 enforcement is warranted, and the other is to be more
7 preventive in our approach by increasing joint training of
8 LEAs and operators.

9 So the problems either don't occur in the first
10 place or if there is a problem, we can respond to it and
11 try and correct it very quickly.

12 --o0o--

13 DEPUTY DIRECTOR LEVENSON: On the training side of
14 things, some of this we just went over in December, prior
15 to a couple of new Board members coming on, but we
16 typically have had for the last ten years an annual
17 allocation in the budget of \$96,000, which came from a
18 budget change proposal, and this is dedicated to training
19 of LEAs. It has to be used for LEA training. That's
20 typically supported about four to eight classes at a few
21 venues around the state each year.

22 In 2000 we entered into a four-year agreement with
23 the Solid Waste Association of North America to provide
24 landfill training to operators and LEA, and we funded that
25 with a contract with SWANA. And that was a very

1 successful training and it raised a number of questions
2 over the last couple years about what should the look of
3 the Board's training program be? How should we involve
4 operators? Should there be certification of training or
5 mandatory requirements? And an item of other related
6 issues.

7 One of the goals that we put in the plan when we
8 developed this last year was to get Board direction on
9 exactly that question, which is whether and how to enhance
10 training.

11 --o0o--

12 DEPUTY DIRECTOR LEVENSON: Just last December, we
13 brought an agenda item to the Committee and the Board on
14 this entire history of training efforts, and the Board did
15 decide to allocate \$150,000 this year to enhance training,
16 specifically to include or to offer more classes and offer
17 them in more venues and also to more systematically
18 include operators in as many classes as possible.

19 Some classes certainly may be only relevant for
20 LEAs, but in other cases operators definitely would be --
21 enhance the training by having folks together in the same
22 room but or at the same field site.

23 The Board also directed the executive director to
24 look at that funding level for future years as part of our
25 own internal budgeting process. So we are in the process

1 of encumbering those funds that the Board authorized in
2 December, and the initial deliverables will most likely be
3 a lot more materials translated into Spanish since in
4 terms of -- this would be focusing more on the operators
5 who many of their employees having -- being Spanish
6 speaking.

7 And then we also have some of the new classes in
8 certainly more venues and starting in late -- late this
9 year. We typically determine our classes way ahead, based
10 on a survey of LEAs, and now we will be expanding the
11 survey to include operators, so we get more suggestions as
12 to what is needed from both operators and LEAs.

13 --o0o--

14 DEPUTY DIRECTOR LEVENSON: Now, turning to
15 enforcement, the goal in the plan is really fairly simple,
16 and that is to identify and remove barriers to more
17 effective enforcement. I will be talking about this much
18 more extensively as part of Item G, so just briefly
19 introduce it here.

20 We have had a number of different activities in
21 the past that have focused on enforcement. In 2003 we
22 formed a partnership working group with LEAs to try and
23 identify barriers. That led to a discussion session at
24 last year's LEA conference and the posting of a joint
25 white paper, if you will, on barriers to more effective

1 enforcement.

2 We've also worked with the CalEPA, the agency and
3 the administration, over the past years in trying to
4 formulate potential legislative concepts that could be
5 considered by the legislature.

6 --o0o--

7 DEPUTY DIRECTOR LEVENSON: The major issues -- and
8 I will just list them here and we will talk about them in
9 more detail on Agenda Item G -- in terms of enforcement
10 are a limited ability on the part of LEAs to impose civil
11 penalties, very little or no ability -- well, no ability
12 to impose criminal penalties for violations of the
13 Integrated Waste Management Act, a limited ability for the
14 Board and the LEAs to address illegal disposal, and also
15 the appeal process, which in many people's views, can
16 deter enforcement.

17 We'll talk about that in Agenda Item G. I'm sure
18 that everybody in the audience will totally agree with
19 everything that's in the agenda item, and we'll have a
20 good discussion, I hope.

21 --o0o--

22 DEPUTY DIRECTOR LEVENSON: I did want to mention
23 also as part of the action plan update that another part
24 of the action plan was to continue working with CalEPA in
25 its own enforcement initiative.

1 In November of 2004, then-Secretary Tamminen
2 announced an enforcement initiative, and the various board
3 and departments and offices within CalEPA have been
4 working on that ever since. There are ten, I believe,
5 working groups, changes from month to month sometimes,
6 find out about new working groups.

7 I've just listed here a few of them that we're
8 involved in. The one that's most overarching is the
9 development of a model enforcement program, and this is a
10 working group that has all the BDOs -- the board,
11 departments, and offices -- involved, and in which we are
12 trying to craft an overall model that the BDOs could then
13 take and look at their own programs and say, yes, we have
14 sufficient training; yes, we have sufficient authorities;
15 or no to any one of those particular components, and then
16 try to adjust accordingly, recognizing that every board,
17 department, and office has a very different underlying
18 statutory authority and various responsibilities.

19 So it makes it difficult to put together a model,
20 if you will. But we're working on that.

21 Sharon Anderson from the Permitting and
22 Enforcement Division is very involved in a working group
23 on cross-agency training so that training is more
24 coordinated, that we certainly notify everyone else's
25 constituents about training where it's feasible to have

1 joint training and cross over the audiences. This group
2 would be working to make that happen.

3 They are also trying to develop a list of core
4 recommended courses that various enforcement inspectors
5 and personnel would take.

6 There's a number of other working groups. I can
7 certainly provide you more details on any of the these,
8 but suffice to say that we are very involved in these
9 working groups. It does take quite a bit of staff time to
10 be involved, but I think there's some really good products
11 that are starting to come out of these working groups.

12 --o0o--

13 DEPUTY DIRECTOR LEVENSON: Other activities in the
14 plan, the enforcement plan, are just to provide our normal
15 assistance to LEAs. Sharon also is very involved in
16 helping plan and coordinate the annual CalEPA Enforcement
17 Symposium and the Inspector Academy.

18 And then under Mark de Bie's direction, we are
19 developing a Web-based enforcement toolbox. We already
20 have a permit toolbox where anybody can kind of see all
21 the ins and outs of the permit process. It's designed to
22 be, you know, hopefully very useful to LEAs and operators,
23 but we are trying to do the same thing for enforcement
24 issues.

25 --o0o--

1 DEPUTY DIRECTOR LEVENSON: Let me turn now to a
2 quick update on the technology assessment plan or the
3 emerging technologies. The idea of this plan is designed
4 to address kind of the future infrastructure needs of the
5 state in terms of how do we manage solid waste as it
6 continues to be generated with increasing population
7 growth and economic activity; can we look at technologies
8 and link the Board with the upcoming hydrogen highway; and
9 certainly, can we look at technologies in light of
10 providing better protection for public health and safety.

11 We've also designed this plan to support our
12 leadership role on the Climate Action Team, which Judy
13 Friedman is leading. And I won't spend much time on that,
14 but you can certainly get more information from Judy on
15 that whole effort.

16 They are definitely cross linked, and to make sure
17 that that cross linkage happens throughout the entire
18 Board, Mark has asked that we -- or has formed, about a
19 month ago, a new technologies group, kind of a matrix
20 management group using resources from across the board.
21 And he's asked me to coordinate that. So I'm doing that,
22 and it's very intimately tied in with the technology
23 assessment plan and our work on climate change.

24 --o0o--

25 DEPUTY DIRECTOR LEVENSON: There are about six

1 different areas of emphasis in the plan. One is to
2 evaluate conversion technology emissions. I'll give
3 you -- just run through these areas and give you a brief
4 status report on where we are on them.

5 The other is to conduct an emerging technologies
6 forum.

7 Third is evaluate anaerobic digestion
8 technologies.

9 And then on the landfill side of things, to
10 continue looking at landfill gas to energy, the potential
11 for converting to landfill gas to hydrogen and other bio
12 fuels. This also provides a lot of links to support our
13 efforts on the Climate Action Team.

14 Another -- a fifth aspect is to look at the
15 efficacy of landfill gas monitoring probes, and we have a
16 contract that the Board approved the scope of work for
17 just last month. It will be competitively bid, so we will
18 be bringing an award back to you probably in May. But
19 this will be to look at just how well landfill gas probes
20 are functioning around the state.

21 And then lastly, through Scott Walker's efforts,
22 we have been doing a lot of work on bioreactor landfills,
23 in which you would inject some liquid, in this case, and
24 enhance decomposition. As part of that, USEPA adopted a
25 rule in 2004 allowing these kinds of landfills to be

1 permitted, and we've been working on that rule since that
2 time.

3 And I'll give you a quick update on that.

4 --o0o--

5 DEPUTY DIRECTOR LEVENSON: So just very briefly, I
6 mentioned that we have a forum. It's scheduled for
7 April 17th and 18th here at the Convention Center.
8 Fernando Berton who is, I think, somewhere over there -- I
9 can't see through the dais here -- is in charge of that.
10 And we started to send out announcements to hundreds and
11 hundreds of people to save that date. We expect that to
12 be a very lively discussion.

13 We also have a contract that's almost executed
14 with the Santa Barbara Air Pollution Control District to
15 do further emissions testing of the residuals from
16 material recovery facilities. This is one of the areas
17 that was identified in the Board's report to the
18 legislature as needing more work -- the area of just what
19 is in emissions from California solid waste when it's put
20 through one of these kinds of facilities.

21 We have a contract with UC Davis to explore, at
22 least on a preliminary overview scale, the feasibility of
23 converting landfill gas to hydrogen. We had our first
24 workshop on that on January 18th, and we will have another
25 workshop on that later this year and then report back to

1 the Board on that.

2 As I mentioned, we have a contract that will be
3 out on the streets for bids, soon, on landfill gas
4 monitoring.

5 --o0o--

6 DEPUTY DIRECTOR LEVENSON: We have been assisting
7 the Climate Action Team, particularly with our
8 interactions with California Energy Commission, or CEC.
9 They are doing a lot of research to refine their models
10 that estimate emissions of greenhouse gasses from
11 landfills. We are working very closely with CEC on
12 developing a new research project for -- to assess that
13 issue, just what are the emissions coming from landfills.
14 And CEC expects to have a 400,000-dollar contract awarded,
15 I believe, this month. It might be next month.

16 And we are part of the team that's formulating the
17 scope of work for that and we'll be working with CEC to
18 implement that. That will be a major research effort that
19 will shed a lot of the light on just what is the status of
20 emissions from landfills.

21 As part of that second bullet there, we've also
22 updated our landfill gas to energy inventory so that for
23 all 155 active landfills and some of the closed landfills,
24 we know exactly what kind of systems for capturing energy
25 are on site.

1 And then, as I mentioned, last year we did adopt a
2 regulation under Subtitle D, which is one of the subtitles
3 under federal legislation, entitled the Resource
4 Conservation Recovery Act. We adopted what are called
5 RD&D regulations. That's the term that EPA used for
6 them -- research, development, and demonstration.

7 These are the regulations that would allow for the
8 permitting of bioreactor landfills, provided they meet all
9 other state requirements.

10 --oOo--

11 DEPUTY DIRECTOR LEVENSON: So just two more
12 slides, and then that will be it for this update.

13 We do participate mostly through Fernando on a
14 couple of important interagency task forces. One is a
15 bioenergy working group which is a interagency working
16 group, resources agency, energy commission, CalEPA,
17 various boards and departments -- a number of different
18 folks who are working on all kinds of issues related to
19 bioenergy. And then somewhat related to that is the
20 biomass collaborative, which is run out of UC Davis, and
21 that's also an attempt to bring together a wide variety of
22 stakeholders beyond state government to look at issues
23 associated with agricultural, forest, and urban solid
24 waste biomass issues.

25 What can we do with all this material that's being

1 generated over the next few years? So that has some
2 important ramifications.

3 We also do a lot of coordination with other
4 agencies when they have specific projects that they are
5 examining. For example, the California Pollution Control
6 Financing Authority, or CPCFA, will give us a call on
7 various projects that come to them for tax exempt bond
8 financing and ask us about the permitting status.

9 The Energy Commission also will go back and forth
10 with us on proposed projects and whether they are eligible
11 for renewable portfolio standard consideration, and as
12 part of that legislation passed a couple years ago
13 requires that they have a proper Waste Board permit. So
14 we checked back and forth with the Energy Commission on
15 that.

16 So there's a lot of things that go on on both of
17 these task -- action plans.

18 --o0o--

19 DEPUTY DIRECTOR LEVENSON: In terms of the
20 technologies action plan, I just want to end by saying
21 that we have the action plan and the kinds of activities
22 listed that I've already talked to you about. We see the
23 potential for many more activities coming to you for
24 direction and consideration.

25 And I think a lot of this will depend on a couple

1 of things that are going on in the next few months. One
2 is the Emerging Technologies Forum -- kind of what
3 direction do we get from stakeholders there. Also our
4 Climate Action Team may come back with needs for more
5 activities. And then the workshops with UC Davis on
6 landfill gas to hydrogen and other conversion to other
7 fuels may need additional work.

8 So these are all areas that come back to you, you
9 know, over the next year, could be less, shorter time
10 period than that, certainly, for more direction. And some
11 of these may involve funding. They may just involve your
12 okay to go forward for your input on how to proceed.

13 So with that I will stop in terms of updating you
14 on the action plans and ask if you have any questions.

15 I've tried to just be -- putting it here in
16 summary form, but there's still a lot that's going on. I
17 have a few other items for my Deputy's Report, but I will
18 stop and see if you have any questions on that.

19 CHAIRPERSON MULÉ: Thank you, Howard.

20 That was a great overview of the action plans.
21 And we're up to date.

22 Do we have any questions for Howard?

23 COMMITTEE MEMBER WIGGINS: Where is the April ET
24 Forum going to be?

25 DEPUTY DIRECTOR LEVENSON: That will be at the

1 Sacramento Convention Center; is that correct, Fernando?

2 MR. BERTON: Yes.

3 DEPUTY DIRECTOR LEVENSON: And we can -- we'll get
4 you more information on that as the agenda develops, but
5 mark the dates for sure.

6 CHAIRPERSON MULÉ: Do we have any other questions
7 for Howard?

8 Okay. Thank you, Howard. Excellent report. And
9 if you can continue with your update, thank you.

10 DEPUTY DIRECTOR LEVENSON: I'll be very brief.

11 CHAIRPERSON MULÉ: Okay.

12 DEPUTY DIRECTOR LEVENSON: I could be longer but
13 in the interest of getting on to our actual items.

14 I do want to mention, once again, that we have two
15 symposia coming up this month on the issue of post-closure
16 land use. This is becoming a more and more important
17 issue, again, in light of urban development and as
18 landfills close, what can they be used for.

19 The Board has been involved in a lot of these
20 different projects, but we have not had a major workshop
21 or symposia on this issue since the early 1990s. So this
22 month, we are going to have two -- they will be the same
23 agenda and speakers, but two symposia. One will be
24 February 15th, 16th down in Ontario, and the other will be
25 February 28th and March 1st in Stockton. So I would just

1 invite you to join those, if you can. I think they will
2 be quite educational for all of us, and there will be a
3 lot of good information. This will be covering planning,
4 regulations, economic issues, permitting issues, the whole
5 gamut associated with land use at those sites.

6 Just two other things I do want to mention, and I
7 won't go into any detail, but just to make sure that
8 everyone is aware that we do have an appeal scheduled for
9 1:30 on the day of next week's board meeting, and that is
10 related to Sunshine Canyon and an appeal by the North
11 Valley Coalition of a hearing panel decision.

12 So more information will be posted on our site
13 probably late tomorrow or early Wednesday. I just want to
14 make sure everyone's aware of that.

15 And then lastly, I think you all are aware of the
16 pending sunset on the exemption for universal waste being
17 disposed at landfills. As of Wednesday this week,
18 universal waste such as fluorescent tubes or mercury
19 switches and single-use batteries will no longer be
20 allowed to be disposed of in landfills.

21 We have been working very extensively with the
22 Department of Toxic Substances Control on this. I know
23 there's a lot of uncertainty amongst many different
24 stakeholders about how this will be implemented and what
25 impacts there will be on household hazardous waste

1 collection facilities, on haulers, on LEAs, and landfill
2 operators and the like.

3 So there are a lot of different activities going
4 on. Jim Lee, who's the Deputy Director for Special Waste
5 Division will be providing a more extensive update at the
6 Wednesday Special Waste Committee meeting.

7 There are a lot of different outreach activities
8 going on, some coordinated through our public affairs
9 office, some that are just going at the staff level.

10 On the front of -- or on the aspect of LEA
11 implementation of this rule and impacts on operators, we
12 have issued an LEA advisory about three weeks ago.
13 DTSC -- this was just a day after DTSC issued its advisory
14 regarding enforcement. That was something that had been
15 reviewed by both the board and the department. I know
16 that there have been a number of questions raised about
17 that guidance, and we are working with the department to
18 issue an addendum to that, probably next week, which we
19 think will help clarify some of the questions that have
20 been raised about universal waste enforcement actions at
21 landfills.

22 With that, I think that's plenty for me.

23 And we can move on to permit items, unless you
24 have any questions.

25 CHAIRPERSON MULE: Are there any questions? Any

1 further questions?

2 With that, Howard, let's move on to Committee Item
3 B, Board Agenda Item 19.

4 DEPUTY DIRECTOR LEVENSON: Okay. Item B is
5 Consideration of a New Full Solid Waste Facilities Permit
6 for the Golden Bear Waste Recycling Center in Contra Costa
7 County.

8 And Bea Poroli is going to provide that
9 presentation.

10 PERMITTING & INSPECTION CONTACT POROLI: Good
11 morning.

12 CHAIRPERSON MULÉ: Good morning.

13 PERMITTING & INSPECTION CONTACT POROLI: The
14 proposed permit is to allow the operation of a new large
15 volume and processing facility. The facility is enclosed
16 on two sides and will be fully enclosed within two years
17 from the permit issuance date. The recycling operation is
18 planned in two phases. The permit allows for phase one,
19 which will include floor sorting of materials such as
20 scrap metal, wood, cardboard, and other easy-to-separate
21 material.

22 Recyclable materials will be stored on site until
23 the containers are full, but no more than 1600 cubic yards
24 of recyclable material will be stored on site at any given
25 time.

1 As indicated on Page 19-3 of the agenda item,
2 Board staff have determined that all of the requirements
3 for the proposed permit have been met.

4 In conclusion, staff recommend that the Board
5 adopt solid waste facility permit decision number 2006-21,
6 concurring in the issuance of solid waste facility permit
7 number 07-AA-0056.

8 The LEA and operator are present to answer any
9 questions you may have.

10 This concludes staff's presentation.

11 CHAIRPERSON MULÉ: Thank you, Bea.

12 Did you say that the facility was enclosed on two
13 sides?

14 PERMITTING & INSPECTION CONTACT POROLI: Yes.

15 CHAIRPERSON MULÉ: Okay.

16 Are there any questions? Any questions?

17 I know that the operator is here.

18 PERMITTING & INSPECTION CONTACT POROLI: Yes.

19 CHAIRPERSON MULÉ: Did you want to say anything?

20 LEA? Operator?

21 Please come forward and state your name.

22 Thank you.

23 MR. NUTI: Good morning.

24 CHAIRPERSON MULÉ: Good morning.

25 MR. NUTI: My name is Paul Nuti. I'm an engineer

1 with Republic Services. I've been with the company since
2 1999. Prior to that I was an environmental engineer for a
3 consulting firm. I just joined the engineering staff
4 again about four months ago. In '99 I joined as an
5 engineer and then I went into management and operations in
6 between these two times.

7 I would like to thank our LEA for being a partner
8 in this process, a very active partner, working with our
9 staff to put together a permit application and make the
10 project go really quite smoothly, from our perspective.

11 And I would like to ask the Board to support
12 staff's recommendation on our project.

13 CHAIRPERSON MULÉ: Okay.

14 Any questions?

15 No.

16 With that, do I have a motion?

17 COMMITTEE MEMBER PEACE: Okay. I would like to
18 move Resolution Number 2006-21.

19 CHAIRPERSON MULÉ: And do I have a second?

20 COMMITTEE MEMBER WIGGINS: Second.

21 CHAIRPERSON MULÉ: We have a motion by Board
22 Member Peace, seconded by Board Member Wiggins.

23 Donnell, would you please call the roll.

24 SECRETARY DUCLO: Members Peace?

25 COMMITTEE MEMBER PEACE: Aye.

1 SECRETARY DUCLO: Wiggins?

2 COMMITTEE MEMBER WIGGINS: Aye.

3 SECRETARY DUCLO: Chair Mulé?

4 CHAIRPERSON MULÉ: Aye.

5 And with that, we can put that on the consent
6 agenda to the full board.

7 Okay. Our next item is Committee Item C.

8 DEPUTY DIRECTOR LEVENSON: Okay. Item C is
9 Consideration of a New Full Solid Waste Facilities Permit
10 for the Lopez Agricultural Services Composting and Soil
11 Blending Facility for Sacramento County.

12 And again, Bea will be giving this presentation.

13 PERMITTING & INSPECTION CONTACT POROLI: The
14 proposed permit is to allow the operation of a green
15 material composting facility.

16 We have indicated on table -- on Page 20-3 of the
17 agenda item, at the time the agenda time was prepared
18 staff have yet to determine the following:

19 Consistency with facility's design and operation
20 with the state minimum standards;

21 Consistency of the project with the California
22 Environmental Quality Act, CEQA;

23 Facility compliance with the nondisposal facility
24 element.

25 Since the item was prepared, the following

1 development took place:

2 On January 30th, 2006, staff conducted a
3 pre-permit inspection with the LEA. We found the design
4 and operation of the facility were consistent with the
5 state minimum standards. However, we also made the
6 finding the facility was operating without a solid waste
7 facility permit, which is a violation of Public Resource
8 Codes Section 44002.

9 And staff have determined that the environmental
10 documents are adequate. Staff at the Board's Office of
11 Local Assistance reported that an addenda item to amend
12 the county's NDFE to include the proposed facility is
13 scheduled to be considered by the Board on February 14th,
14 2006.

15 At this time staff recommend that the Board adopt
16 solid waste facility permit decision number 2006-22,
17 concurring in issuance of solid waste facility permit
18 number 34-AA-020, if the NDFE is also approved by the
19 Board.

20 Board staff will prepare an updated agenda item
21 and resolution, which will include these updates by the
22 February Board meeting.

23 Representatives by the LEA and operator are
24 present.

25 This concludes staff's presentation.

1 CHAIRPERSON MULÉ: Thank you, Bea.

2 And would either the operator or the LEA like to
3 address the Board? Because I do have a question. So if
4 both the operator and the LEA would like to come forward.

5 Thank you.

6 First I will let Board Member Peace ask a few
7 questions.

8 Thank you.

9 COMMITTEE MEMBER PEACE: I guess my first question
10 would be to Howard.

11 Since protection of the public health and safety
12 and, you know, health and safety and protection of the
13 environment is our number one priority, do you feel that
14 staff had adequate time to review the CEQA record?

15 DEPUTY DIRECTOR LEVENSON: Prior to last week, I
16 probably would have wondered about that, but they have had
17 sufficient time in the last few days to review that record
18 and come to a satisfactory determination that CEQA does
19 support the permit.

20 COMMITTEE MEMBER PEACE: Okay. Thank you.

21 My other question was since -- from the time that
22 the LEA determined that a facility, such as yours,
23 required a permit that the operator -- says here that the
24 operator shall obtain the permit within two years from the
25 date of the LEA's termination. Can you tell me why you

1 couldn't get the permit within two years? What obstacles
2 did you have?

3 MR. LOPEZ: Well, we could -- my name is --

4 CHAIRPERSON MULÉ: Excuse me. State your name.

5 MR. LOPEZ: My name is Al Lopez. I'm the owner of
6 Lopez Ag Service.

7 We couldn't get the permit because we had -- we
8 had to have the NDFE, and we got delayed on that and
9 that's why we passed the time of the two years.

10 See, when I was operating, I wasn't -- I didn't
11 need to get a solid waste facility permit, but when the
12 regs changed, I had to apply for that.

13 COMMITTEE MEMBER PEACE: So it wasn't that you
14 waited to start the permit process. It was held up in
15 your local government process somewhere?

16 MR. LOPEZ: Yes, that's right. That's when we
17 started -- that's when I started giving my consultant --
18 we started processing the paperwork to get that. But the
19 NDFE held us up. That's why we're here at this point now,
20 and we have right now with the LEA, we have a cease and
21 desist order. We have February 14th to get our permit
22 issued to us.

23 COMMITTEE MEMBER PEACE: Okay. Thank you.

24 CHAIRPERSON MULÉ: Well, that was my question.

25 Thank you, Board Member Peace.

1 Do you have any questions, Board Member Wiggins?

2 COMMITTEE MEMBER WIGGINS: Well, I think I should
3 say I did visit the site. And I was surprised how small
4 the site was, so...

5 MR. LOPEZ: Thank you. Thank you for visiting the
6 site. I appreciate it.

7 CHAIRPERSON MULÉ: I too was at the site and I
8 just want to -- I do want to commend you for taking what
9 we normally consider hard to dispose of and/or recycled or
10 process items, such as rice hull ash and gypsum raw board
11 and other items, and finding markets for those.

12 Because that's key to what we are all about here
13 is we're trying to divert this material from landfills to
14 a beneficial use.

15 So I do understand that you were held up on your
16 NDFE. I do understand that that is coming before our
17 Sustainability and Market Development Committee tomorrow,
18 and so we could, if this is approved, we could make it
19 conditional. We will make it conditional upon the
20 approval of the NDFE by the other committee.

21 MR. LOPEZ: Thank you.

22 CHAIRPERSON MULÉ: So with that, do I have a
23 motion for approval?

24 COMMITTEE MEMBER WIGGINS: I will move approval.

25 COMMITTEE MEMBER PEACE: So in the motion, we did

1 make a condition --

2 CHAIRPERSON MULÉ: In the motion it is conditional
3 upon the approval of the NDFE.

4 COMMITTEE MEMBER PEACE: I'll second that.

5 CHAIRPERSON MULÉ: It is moved by Board Member
6 Wiggins, seconded by Board Member Peace.

7 Donnell, would you please call the roll.

8 SECRETARY DUCLO: Members Peace?

9 COMMITTEE MEMBER PEACE: Aye.

10 SECRETARY DUCLO: Wiggins?

11 COMMITTEE MEMBER WIGGINS: Aye.

12 SECRETARY DUCLO: Chair Mulé?

13 CHAIRPERSON MULÉ: Aye.

14 That passed unanimously and that will be on the
15 consent agenda to full board as well.

16 Thank you all for being here. I appreciate it.

17 Our next item is Committee Item D, Board Item 21.

18 Howard?

19 DEPUTY DIRECTOR LEVENSON: Thank you. And before
20 we go to that item, I just want to mention a couple of
21 things that were brought up in the last item. One was the
22 violation that was cited for permit terms and conditions
23 being exceeded as opposed to state minimum standards. Bea
24 mentioned they had cited them for a violation. I just
25 want to point out for the new board members that we make a

1 differentiation between state minimum standards and then
2 what's in the permit terms and conditions.

3 And the Board has authority to deny a permit based
4 on violations of the state minimum standards, which are
5 specified in regulations, but not necessarily because a
6 permit is out of compliance with its terms and conditions.
7 But that's just a nuance that you will hear about from
8 time to time.

9 The other -- Mr. Lopez mentioned that the LEA had
10 issued a cease and desist order for those activities,
11 since they were beyond their timeframe, which was an
12 appropriate action. The operator did appeal that cease
13 and desist order, and per statute, the action of a cease
14 and desist order for a facility that is in the process of
15 getting a permit is stayed, so the cease and desist order
16 does not go into effect.

17 And that's one of the issues that we will bring up
18 in the last item today. So I just wanted to make that
19 link for you.

20 CHAIRPERSON MULÉ: That's great. Thank you,
21 Howard, for doing that.

22 Okay.

23 DEPUTY DIRECTOR LEVENSON: Okay. Item D or Board
24 Item 21 is Consideration of a New Full Solid Waste
25 Facilities Permit for the County of Mariposa Solid Waste

1 Composting Facility in Mariposa County.

2 And Virginia Rosales will be making this
3 presentation.

4 CHAIRPERSON MULÉ: Good morning.

5 MS. ROSALES: Good morning, Madam Chair and
6 Committee Members.

7 The proposed Mariposa County Solid Waste
8 Composting Facility is owned by the County Department of
9 Public Works.

10 The facility is scheduled to commence operation
11 after permit issuance and will be operated by the County.
12 The proposed project consists of a transfer processing and
13 solid waste composting facility located on 3.1 acres on
14 the property of the Mariposa County landfill.

15 The permitted hours for receipt of waste are 7:00
16 to 5:00, 7 days per week, and composting facility and
17 equipment maintenance may occur continuously.

18 The permitted maximum tonnage is 60 tons per day.

19 The solid waste stream from the county and
20 Yosemite National Park will be dedicated to this facility.
21 When this item was prepared, Board staff had not completed
22 their review of the Reported Facility Information, or the
23 RFI, to determine consistency with state minimum standards
24 and completeness of this document.

25 Board staff has since determined, based on review

1 of the RFI, the design and operation designed for the
2 transfer processing station, and the solid waste
3 composting facility would allow the facility to comply
4 with state minimum standards and finds that the RFI meets
5 the requirements of Title 14.

6 The agenda item in resolution will be updated this
7 week to reflect staff's acceptable findings of consistency
8 with state minimum standards and the RFI completeness.

9 Staff have determined that all the requirements
10 for the proposed permit have been fulfilled and finds that
11 the EIR is adequate for the Board's evaluation of the
12 proposed project.

13 Therefore, Board staff recommends the Board adopt
14 Resolution Number 2006-23, concurring with the issuance of
15 solid waste facilities number 22-AA-0013.

16 Brian Hodge representing the Mariposa County LEA,
17 and Steve Engfer representing Mariposa County Department
18 of Public Works are here today and available to answer any
19 questions you may have.

20 This concludes staff's presentation.

21 CHAIRPERSON MULÉ: Thank you, Virginia.

22 First of all, we do have one speaker on this item,
23 so I'm going to call the speaker forward first, and then
24 we will take questions.

25 George Eowan. Good morning.

1 MR. EOWAN: Good morning, Madam Chair and Members.

2 My name is George Eowan and I am the consultant to
3 the project. And I normally wouldn't come up here and
4 talk about a permit, but I just wanted to put this
5 facility and project in context for you, because it's not
6 the normal kind of project that you are going to see here.

7 We were contacted in 1994 by the County when 939
8 was just beginning to be implemented. And this is a rural
9 county with 17,000 residents and somewhere between 4 and
10 6 million visitors a year because of Yosemite National
11 Park, so it's a very unique environment. It has -- you
12 know, it's a very rural area, and there are a lot of
13 things going on in the county that made it difficult to
14 decide how is this county going to comply with not only
15 the 25 percent mandate at that time, but the 50 percent
16 mandate in the year 2000.

17 And if you recall, rural counties had the ability
18 to have an exemption from 939 mandates, but this county
19 and the elected officials were really dedicated to the
20 concepts and goals of 939. They said, no, we don't want
21 to do an exemption. We believe in this. And we want to
22 do what it takes to make this happen.

23 And so they hired us, and we went and we formed a
24 committee or a group, a working group of people that
25 included your staff. We spent quite a bit of time looking

1 at technologies and operations of systems and processes
2 around the world. We travelled to and saw probably 25 or
3 30 different facilities.

4 And ultimately we came up with a system that is
5 what you have here today. And it is a mixed solid waste
6 composting facility that's unlike anything you're going to
7 see, at least in this state. If you go to Germany, you
8 might see something like this.

9 But we -- at the same time we're working with the
10 National Park Service and they dedicated a
11 2 million-dollar grant to this program. The United States
12 Department of Agriculture donated another grant and gave
13 us a low-interest loan, in addition. The county dedicated
14 money, because this is an expensive facility for the kind
15 of thing that we're doing here.

16 As I said, it's a mixed solid waste composting
17 facility, but the County, as I said, is dedicated to 939
18 issues, and because they can't really do source separated
19 collection at the residential level throughout the county
20 because of its rural nature, we're setting it up now in
21 that regard.

22 But in the future they are planning on designing
23 it in such a way and using educational programs in the
24 county so that we can have source separated organics,
25 green waste, and so forth that can go into the cells of

1 the composting system. Because the way it's designed,
2 it's very flexible, it's modular. So we can have
3 different kinds of feed stocks going into different
4 composting cells so that we can get different products,
5 higher grade products and so on and so forth.

6 So it's been a partnership with local, state, and
7 federal agencies. It's been a long time coming. So as a
8 consultant, I kind of have mixed feelings about the fact
9 that it's coming to an end in that regard.

10 But it's really a unique story and one that I
11 think -- and we have an opening planned for March 15th,
12 and all of you are invited to come and see this. And it
13 really would be worth your while to come down to Mariposa
14 and see it at that time.

15 So that's my brief story on that.

16 Thank you very much.

17 CHAIRPERSON MULÉ: Thank you, George. And that
18 was a great overview. I really appreciate your sharing
19 that with us.

20 Do we have any questions for the operator or the
21 LEA?

22 COMMITTEE MEMBER PEACE: I guess again my first
23 question is to staff.

24 Howard, since they say they did submit the permit
25 on December 20th and then on January 17th, they put it in

1 revised permit -- so again, since our first priority is
2 protection of the public health and the environment, did
3 we have adequate to time for review of this revised
4 permit?

5 DEPUTY DIRECTOR LEVENSON: Again, Ms. Peace, I do
6 appreciate the question. And this is an issue that will
7 come up in our later agenda item. We did have enough
8 time, but as has occurred in the past, it was at the end
9 of the process. And we had to go back and forth on a
10 number of different issues. So we did have time, and I'm
11 satisfied that the requirements are met.

12 CHAIRPERSON MULÉ: Okay. Thank you.

13 Then I just have a couple questions.

14 In the item, it says in your facility fresh air is
15 drawn into a system and is balanced by a discharge of
16 excess air from a heat exchanged through a biofilter.

17 Could you -- I guess I'm just curious about a
18 biofilter. Does it filter out odors? Does it also filter
19 out or reduce greenhouse gas emissions?

20 MR. ENGFER: The biofilter is designed to accept
21 all of the air from the composting vessels, and it's
22 virtually scrubbed through the biofilter, which has a
23 medium of wood chips that are started through kind of a
24 compost of itself. So it's oversized for the facility
25 design at this point, so the air exchanges in the vessels

1 themselves go through a ventilation system into a plenum
2 and out through the biofilter that reduce odors. That's
3 the primary reason.

4 CHAIRPERSON MULÉ: Does it have anything to do
5 with greenhouse?

6 MR. ENGFER: Not to my knowledge at this point.

7 COMMITTEE MEMBER PEACE: And then also the other
8 question I had. It said the EIR, it identified
9 significant environmental impacts in the following areas,
10 that with the proposed mitigation, it would be reduced to
11 a level of less than significant.

12 I was just wondering if you could tell me what
13 those environmental impacts were and what the mitigation
14 measures were in terms of air quality and --

15 MR. ENGFER: Air quality was one item that was
16 identified and through the design of the facility
17 including the biofilter, that was overcome through the
18 design. That was one mitigation.

19 There were a couple of other items. One had to do
20 with, I believe, water, but we designed the facility in a
21 way to recirculate the water. And so it's -- we need
22 water for the composting process, and the biofilter
23 actually helps a little bit with that. There's a sump
24 system that's connected to a drainage and recirculation
25 program, and that's used again in the vessels.

1 Another item was Fish and Game had a little bit of
2 concern over any potential migratory birds, things of that
3 nature. It was a disturbed site. There weren't any
4 issues with that. We did relocate some seeds for Fish and
5 Game, some potentially significant vegetation.

6 COMMITTEE MEMBER PEACE: Here, they describe here
7 "hazardous materials."

8 MR. ENGFER: Excuse me?

9 COMMITTEE MEMBER PEACE: It says here there was
10 also some hazardous materials identified. What was the
11 mitigation for --

12 MR. ENGFER: That's referencing a naturally
13 occurring asbestos that was identified in the ground at
14 the site. So when we went down the road of doing the
15 construction project we had a program that the Health
16 Department enforced for making sure that we had adequate
17 moisture levels on all of the excavation that occurred
18 during the grading portion of the program.

19 Also we're covering the material to specify the
20 requirements.

21 COMMITTEE MEMBER PEACE: Okay. Thank you.

22 MR. ENGFER: My name is Steve Engfer and I'm
23 Mariposa County Solid Waste and Recycling Manager.

24 CHAIRPERSON MULÉ: Thank you very much.

25 Do we have any other questions?

1 With that, do we have a motion?

2 COMMITTEE MEMBER PEACE: Yes. I would like to
3 move Resolution Number 2006-23.

4 COMMITTEE MEMBER WIGGINS: Second.

5 CHAIRPERSON MULÉ: Motion by Board Member Peace,
6 seconded by Board Member Wiggins.

7 And if you desire we can substitute the previous
8 roll and put this on consent as well.

9 Okay. Our next item is Committee Item E, Board
10 Agenda Item 22.

11 DEPUTY DIRECTOR LEVENSON: Moving along, this is
12 Consideration of a Revised Full Solid Waste Facilities
13 Permit for the Palo Alto Refuse Disposal Site in Santa
14 Clara County.

15 Angela Basquez of our staff will make this
16 presentation.

17 MS. BASQUEZ: Good morning.

18 The Palo Alto Refuse Disposal Site is an existing
19 landfill owned and operated by the City of Palo Alto. The
20 proposed revised permit is to allow the following:

21 Combine the Palo Alto refuse disposal site and the
22 Palo Alto composting facility into one single permit;

23 Clarify the daily peak tonnages for municipal
24 solid waste, green material, inert debris, and soil;

25 And also relocate the composting and the chipping

1 and grinding operations within the landfill, roughly
2 300 feet south of the current location.

3 The LEA has determined the following, and staff
4 have made the following determinations:

5 The permit application package is complete and
6 correct;

7 The joint technical document meets the
8 requirements of Title 27 and the report of composting site
9 information meets the requirements of Title 14;

10 The proposed revised solid waste facilities permit
11 is consistent with and is supported by the existing CEQA
12 analysis;

13 The facility is consistent with state minimum
14 standards and the County's Solid Waste Management Plan.

15 In conclusion, staff recommends this board adopt
16 Decision Number 2006-24, concurring the issuance of a
17 revised solid waste facilities permit for the Palo Alto
18 refuse disposal site number 43-AN-0001.

19 Mr. Stan Chau, the Santa Clara LEA, is here to
20 assist with any questions you might have.

21 This concludes staff's presentation.

22 CHAIRPERSON MULÉ: Thank you very much.

23 Do we have any questions for staff or for
24 Mr. Chau?

25 Yes. Board Member Wiggins.

1 COMMITTEE MEMBER WIGGINS: Yes.

2 Why was there fecal coliform in the sample?

3 MS. BASQUEZ: Oh, the fecal coliform. Oh, the
4 previous violation given in the past?

5 COMMITTEE MEMBER WIGGINS: Yeah.

6 CHAIRPERSON MULÉ: Good morning. Would you
7 identify yourself for the record, please.

8 MR. CHAU: Yes. Good morning. My name is Stan
9 Chau. I'm with the County of Santa Clara LEA program.

10 And to answer your question regarding the fecal
11 contamination that we had had in one sample in the past,
12 we had worked with the operator with that. We confirmed
13 that it was a positive, and the way that we went ahead and
14 try to resolve that problem was to go ahead and do some
15 resampling, but that also came out positive.

16 So what they eventually had done is decide not to
17 let that particular group that they had sampled from to go
18 out and went ahead and reinstituted into the composting
19 process and then resampled after that. And follow-up
20 sample from that came out clear, or to meet the state
21 minimum standards.

22 CHAIRPERSON MULÉ: Is that it, Board Member?

23 Okay. Thank you, Stan. Thank you for being here.
24 We really appreciate your coming up for this.

25 MR. CHAU: It's my pleasure. Thank you very much.

1 CHAIRPERSON MULÉ: Thank you.

2 Do I hear a motion then?

3 COMMITTEE MEMBER PEACE: I'd like to move
4 Resolution Number 2006-24.

5 COMMITTEE MEMBER WIGGINS: Second.

6 CHAIRPERSON MULÉ: We have a motion by Board
7 Member Peace, seconded by Board Member Wiggins.

8 Let's substitute the previous roll and put this
9 item on consent agenda.

10 Our next item is Committee Item F, Board Agenda
11 Item 23.

12 Howard.

13 DEPUTY DIRECTOR LEVENSON: Thank you, Madam Chair.

14 Our last permit item is Consideration of a New
15 Full Solid Waste Facilities Permit for the Sun Valley
16 Paper Stock Material Recovery Facility and Transfer
17 Station in the City of Los Angeles.

18 Willy Jenkins will make this presentation.

19 CHAIRPERSON MULÉ: Good morning.

20 MR. JENKINS: Good morning. The proposed permit
21 will allow the following:

22 Development of a 24700-square-foot transfer
23 building;

24 Materials acceptance, processing, and refuse
25 transfer 24 hours a day, Monday through Sunday;

1 Permitted tonnage of 750 tons per day;
2 Permitted traffic volume of 293 vehicles per day.
3 The facility is currently operating as a recycling
4 center. However, Board staff confirmed with assistance
5 from the LEA that the operator was not meeting the
6 residual solid waste requirement in Title 14. This
7 information is also noted on Page 3 of Agenda Item 23.

8 Board staff provided guidance to the LEA in a
9 letter dated January 12, 2006, recommending issuance of a
10 cease and desist order to the operator for those
11 activities requiring a solid waste facilities permit,
12 because Board staff believed the operator was operating a
13 transfer processing station without a permit.

14 This was confirmed when Board staff conducted a
15 pre-permit inspection. At the pre-permit inspection, the
16 Board staff confirmed the operation was not in violation
17 of state minimum standards but issued a violation for
18 permit requirements per Public Resources Code 44002 for
19 operating without a solid waste facilities permit.

20 Board staff has determined that all of the
21 requirements for operating a large volume transfer station
22 have been fulfilled.

23 Therefore, staff recommends Board adopt Resolution
24 Number 2006-25, concurring with the issuance of solid
25 waste facility permit number 19-AR-1227.

1 Also here for this item today is the owner and
2 operator.

3 CHAIRPERSON MULÉ: Thank you.

4 Do we have any questions?

5 COMMITTEE MEMBER PEACE: Again, did we have
6 adequate time to review this? Because this also came in
7 late.

8 DEPUTY DIRECTOR LEVENSON: Yes, ma'am. In this
9 case we did have adequate time.

10 COMMITTEE MEMBER PEACE: Thank you.

11 DEPUTY DIRECTOR LEVENSON: There have been a
12 number of other issues associated with this facility, but
13 this -- for purposes of the permit we did have sufficient
14 time.

15 COMMITTEE MEMBER PEACE: So the facility was up to
16 like, what, 30 percent residual instead of just the
17 10 percent? So they need to not be recycling facility and
18 be a transfer station.

19 When they started out, were they always just doing
20 curbside commingled recycling? Did it used to be --

21 MR. JENKINS: I can get the operator to come up
22 and answer the question.

23 COMMITTEE MEMBER PEACE: Yeah.

24 CHAIRPERSON MULÉ: Great.

25 Good morning. Would you state your name for the

1 record, please.

2 MR. CLEMENTS: Yes. My name is Chip Clements.

3 I'm a consultant for Sun Valley Paper Stock.

4 Good morning, Madam Chair and Board Members.

5 CHAIRPERSON MULÉ: Good morning.

6 MR. CLEMENTS: Yes. This facility was always what
7 we would typically term a clean MRF. They process clean
8 curbside recyclable materials, primarily the blue can
9 material from the City of Los Angeles. They are one of
10 the five contractors for the City.

11 COMMITTEE MEMBER PEACE: How long have you been in
12 operation?

13 MR. CLEMENTS: At that location about 10 years and
14 in Sun Valley, overall, more like 20 years.

15 COMMITTEE MEMBER PEACE: At this location at one
16 time were they getting just the 10 percent residual and it
17 has just gotten worse over the years?

18 MR. CLEMENTS: Yeah. Essentially what happened
19 was when the regulations were first passed, most of the
20 cities had a different type of curbside program that we
21 have now. Most of them started with the little baskets
22 where you put your paper in one, your bottles in another,
23 your cans in a third. And with those types of programs
24 they were actually very clean. People did a good
25 separation job; the drivers could actually see what was in

1 the baskets when they were collecting it.

2 And I believe at that point most of the programs
3 were probably under this 10 percent. When the cities and
4 the states switched to the automated commingled
5 three-can-type systems, which most of them have now, our
6 feeling is that the participation skyrocketed, our
7 diversion skyrocketed, and a lot of good things happened.
8 But along with that, we got these rising levels of
9 contamination.

10 But in fact when we started in the city of Los
11 Angeles in the first test section there, even that program
12 was actually under 10 percent, but we've seen over the
13 years this gradual erosion, or whatever you would like to
14 call it, the increase of the residual, and that's actually
15 why three years ago the company decided we should go for a
16 full permit so we don't continually run into this issue of
17 are we at 10 percent or over 10 percent. So we've
18 actually been at this for three years, and here we are
19 now.

20 COMMITTEE MEMBER PEACE: You say you've seen an
21 increase in more and more residual matter.

22 Do you think that is due to education of the
23 public? I mean, do the haulers that come to your
24 facility, do they have any sort of education?

25 MR. CLEMENTS: Yeah. I think it mostly is the

1 education. In this case it's the City of Los Angeles
2 Bureau of Sanitation, and they have recently really
3 rededicated themselves to increasing the education. There
4 hasn't been much over the last few years. I think budget
5 issues and so on, but they have come out now and said
6 that's one of their priorities.

7 Actually, they have two as far as the curbside
8 program. One is to reduce the level of contamination in
9 the blue can; get people to do a better separation.

10 And the second one is get more recyclables from
11 the black can into the blue can, so they are going to
12 focus more on both of those, and that is one of their
13 priorities now. But I think that is the problem as we got
14 the blue can, as we continually expanded the types of
15 materials you can throw into it.

16 So now, for example in Los Angeles you can throw
17 film plastic into your blue can, but there really hasn't
18 been an education program on that. And I think people
19 have gotten confused because so much is all right now that
20 it's harder for them to discern if this plastic is good or
21 not, whereas in the old days it was just cans, bottles,
22 and newspaper. It was pretty clear.

23 But I do think education is a big issue now, and
24 we obviously have to work harder at that.

25 COMMITTEE MEMBER PEACE: Education is a big issue.

1 I mean, I'm a board member and every time I go through
2 something in my container, it's like does it go in here or
3 doesn't it go in here? It is a problem. I think we all
4 need to stress that we need better education.

5 And I see that you are operating under a cease and
6 desist order right now with an automatic stay.

7 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
8 Howard, if I may.

9 DEPUTY DIRECTOR LEVENSON: Yeah.

10 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
11 Mark de Bie with Permitting and Inspection.

12 They are not operating under a cease and desist
13 order. The LEA has yet to take action per our request.

14 DEPUTY DIRECTOR LEVENSON: I will just add on to
15 what Mark indicated, that we have communicated with the
16 LEA in early January, indicating that it was our opinion
17 that a cease and desist order was warranted and we are --
18 and will be following up with the LEA on this issue.

19 CHAIRPERSON MULÉ: Thank you, Howard.

20 Do we have any other questions?

21 Board Member Peace? Board Member Wiggins? Any
22 other questions?

23 COMMITTEE MEMBER WIGGINS: Was there any
24 disciplinary action taken on this issue?

25 DEPUTY DIRECTOR LEVENSON: I'm sorry. Any what?

1 COMMITTEE MEMBER WIGGINS: Any disciplinary
2 action?

3 DEPUTY DIRECTOR LEVENSON: No. This is part of
4 our normal back and forth with an LEA on these issues and
5 in this case we do believe that a cease and desist order
6 should have been issued, and this will be discussed with
7 the LEA and could become a performance, an LEA evaluation
8 performance issue with the LEA.

9 Part of an entirely -- a process separate from the
10 permit process -- and we will have an item next month on
11 the LEA evaluation process and our current status on
12 evaluating LEAs in the, what's called the, third cycle of
13 evaluations.

14 COMMITTEE MEMBER PEACE: I just want to ask
15 another question.

16 It says here that the city -- a portion of city
17 LEA does not have resources to routinely inspect all of
18 the buyback recycling centers and clean MRFs in the city
19 of Los Angeles.

20 Do we have any idea how many other facilities such
21 as this one might be out there, that are --

22 DEPUTY DIRECTOR LEVENSON: I don't, offhand.

23 COMMITTEE MEMBER PEACE: -- better than having a
24 30 percent residual?

25 DEPUTY DIRECTOR LEVENSON: In terms of 30 percent

1 residuals, any time information comes to us or the LEA in
2 terms of complaint or some numerical information, if you
3 will, that there's an exceedance of the 10 percent
4 threshold, then we do try to work with the LEA to have
5 them go out and inspect the site to see if it has gotten
6 out of compliance with that issue.

7 We have -- we encourage LEAs to react on that. It
8 is not a requirement that they go out and inspect those
9 facilities because they are not permitted by us.

10 In terms of how many, I don't know.

11 Mark, do you have any sense?

12 It could -- it depends on how you define this. It
13 could go as far as drop off centers, dirty MRFs.

14 COMMITTEE MEMBER PEACE: I wasn't encouraged to
15 see that the City Planning Department is working on a
16 pilot project to flag all those types of operations and to
17 do an initial review.

18 PERMITTING & INSPECTION BRANCH MANAGER de BIE: My
19 staff and I do not have any sense of how many there may be
20 out there. And so, you know, pretty much outside our
21 regulatory authority to deal with, except as Howard
22 indicated, if evidence comes to the LEA of a non-compliant
23 situation, they are obligated to investigate it. So
24 that's how it's being handled currently is sort of
25 complaint-by-complaint basis.

1 COMMITTEE MEMBER PEACE: Well, they were
2 misfortunate to have an article written about you.
3 Brought it to the LEA's attention. Okay.
4 Thank you.

5 CHAIRPERSON MULÉ: Okay. So just for
6 clarification, the LEA is not required to inspect these
7 facilities. However, they can do so on their own. Each
8 LEA around the state has the option, if you will, of
9 inspecting these types of facilities, but they are not
10 required under current statute to do so.

11 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
12 There is no mandated frequency for inspection. They have
13 authority to inspect in an attempt to investigate to
14 determine whether or not they are compliant or
15 non-compliant with the three-part test. So in that
16 capacity they can conduct inspections of these sites to
17 determine whether they can remain a recycling center or
18 need to move to a transfer station.

19 CHAIRPERSON MULÉ: Okay. Thank you for that
20 clarification, Mark.

21 And Chip, I do have a question for you.

22 I understand that in talking with the City in past
23 conversations that the City had embarked on a pilot
24 multi-family recycling program a little over a year ago.

25 And I was just curious, was the material collected

1 from that multi-family pilot recycling program brought to
2 your facility for processing?

3 MR. CLEMENTS: Yes, it was.

4 CHAIRPERSON MULÉ: Okay. So then would that then
5 also contribute to the higher contamination levels?

6 Because as we all know, having been in this
7 business for many years, multi-family recycling programs
8 are probably the most difficult to implement in terms of
9 getting uncontaminated product out. I mean, there's just
10 a lot contamination in multi-family recycling programs for
11 a variety of reasons, so would you say that that
12 contributed to your higher contamination level?

13 MR. CLEMENTS: Yes, I think it did.

14 In fact, one of the reasons we are developing this
15 facility and building this new building and so on is to
16 look into the future to service the city of LA and both
17 their multi-family and commercial recycling programs. The
18 City's making a big effort on that.

19 We had sort of the sense that we have a higher
20 contamination level when we started dealing with the
21 multi-family. We're working with the LEA right now to
22 give them numbers, and we're going to subtract out those
23 pilot programs so that the numbers that we give them on
24 the residual are broken out as far as the curbside
25 program, our pilot multi-family, and we're actually doing

1 a pilot commercial MRFing program now as well, but those
2 will be separated out so it will be clear.

3 CHAIRPERSON MULÉ: Good. That's a good plan.

4 And then my understanding is also in reading the
5 newspaper and the LA Times, is that the city is expanding
6 this multi-family recycling program, citywide, to meet the
7 diversion mandates of AB 939; is that correct?

8 MR. CLEMENTS: That's correct.

9 Right now there's a total of I think it's
10 550,000 --

11 CHAIRPERSON MULÉ: Units.

12 MR. CLEMENTS: -- units. And 50,000 of those were
13 part of these five pilot programs and they're going to
14 continue. So the city is going to start rolling that out
15 with the idea that every unit would have the availability
16 to recycle, and there may be different programs which they
17 will probably need for different areas, but that's the
18 pilot program that this facility was part of last year.

19 CHAIRPERSON MULÉ: Okay. And again, as Board
20 Member Peace had mentioned earlier, then certainly hope
21 that the City will be conducting an extensive and
22 comprehensive public outreach and education program.

23 COMMITTEE MEMBER PEACE: I have one more question.

24 You didn't seek out the LEA say, gee, I'm taking
25 30 percent residual. I need -- I need a different kind of

1 permit.

2 Did you know when you were taking that much
3 residual, did you know that you were not really --

4 MR. CLEMENTS: There was this 10 percent limit.
5 We've had worked -- you know, it's actually a detriment to
6 the company that that residual is so high. It's extremely
7 expensive.

8 We have to pay for disposal of this 30 percent, so
9 we have worked through the years with the Bureau of
10 Sanitation and actually done a pretty remarkable job at
11 recovering and recycling non-traditional materials to try
12 and get that number down.

13 We have got a special glass, call it, recovery
14 machine that's extremely expensive we put in to try and
15 get all the broken glass out, other residuals. So we
16 worked with them in the hopes that we can get it back
17 down, you know, to that level. But we realize that's
18 going to be hard, and plus we want to service these new
19 programs.

20 And I think for them, we're really going to have
21 to be a transfer station. We want to do probably some
22 dirty MRFing of some of these waste streams that are
23 difficult to sort of separate. So we just saw the writing
24 on the wall three years ago and have worked to get to this
25 point.

1 COMMITTEE MEMBER PEACE: Okay. Thank you.

2 CHAIRPERSON MULÉ: Good.

3 Are there any other questions?

4 Do I have a motion for approval?

5 COMMITTEE MEMBER PEACE: I would like to move

6 Resolution Number 2006-25.

7 COMMITTEE MEMBER WIGGINS: Second.

8 CHAIRPERSON MULÉ: That was moved by Board Member

9 Peace, seconded by Board Member Wiggins.

10 And let's substitute the previous role and put

11 this item on consent agenda as well.

12 Our final item for today is Committee Item G,

13 Board Agenda Item 24. This is just for the Committee

14 only.

15 DEPUTY DIRECTOR LEVENSON: Thank you, Madam Chair.

16 And while I'm getting going, I'll ask Mr. de Bie

17 and Mr. Bledsoe to come on up so that I can defer all

18 tough questions to those guys.

19 I'm going to go ahead and give the overview of

20 this item and then just to open it up for your questions.

21 And I'm sure there will be comments from various

22 stakeholders in the audience.

23 (Thereupon an overhead presentation was

24 presented as follows.)

25 DEPUTY DIRECTOR LEVENSON: This is just a

1 discussion item to have statutory issues related to
2 permits and enforcement processes. The purpose of this
3 item is simply to provide you with an initial description
4 of those issues. The Board has a very lengthy history of
5 discussions and items related to enforcement issues and
6 permitting processes -- very briefly -- just so you have
7 some context for some of these discussions.

8 --o0o--

9 DEPUTY DIRECTOR LEVENSON: Starting in the last
10 five years, in 2000 the Bureau of State Audits issued a
11 report that raised questions about issues such as permits
12 for landfills with long-term gas violations, allowing
13 operators to temporarily violate the permit conditions,
14 the terms and conditions. I would also raise questions
15 about the process for imposing civil penalties and the
16 Board's role in reviewing and approving closure plans.

17 In response, a number of different things
18 happened. One was the legislature adopted AB 1497 in
19 2003, I believe, or '04. And among other things, we're
20 still working on regulations related to that bill in terms
21 of significant change and revision of a permit, but it
22 also did amend the appeal process somewhat and lift some
23 of the barriers on administrative penalties.

24 In 2003, I mentioned earlier this morning, the
25 Waste Board and the LEAs formed a working group to look at

1 barriers, more effective enforcement, and this was
2 culminated in a paper that was presented and discussed at
3 the 2005 LEA conference and is available on our Web site
4 and forms the basis for much of this item -- not all.

5 There also have been recent criticisms by CalEPA
6 about the Board's enforcement efficacy, and I will come
7 back to that in just a moment.

8 Last year, in response to the Board's policy
9 directions, staff developed several priority action plans
10 and one of course was the Enforcement and Training Action
11 Plan that I spoke about earlier this morning. And one of
12 the tasks in that was to bring to the Board a discussion
13 of legislative issues related to enforcement.

14 --o0o--

15 DEPUTY DIRECTOR LEVENSON: Now, I mentioned that
16 there have been some observers who have contended that LEA
17 and Waste Board solid waste enforcement is lacking.
18 CalEPA, for example, has cited high numbers of inspections
19 but relatively few enforcement actions and very few
20 collected penalties relative to solid waste. I'm not
21 talking about tires here, at all -- just about solid
22 waste.

23 In my view this is not necessarily surprising that
24 we would have fewer enforcement actions and penalties on
25 one side of the ledger, because these are not hazardous

1 waste operations. They do handle large amounts of
2 materials on a daily basis, and the operations can
3 certainly change on a daily basis, so we do believe that
4 frequent oversight and monitoring -- for example, in the
5 form of monthly LEA inspections -- is valuable in keeping
6 these facilities in compliance, but they are not the kinds
7 of facilities that generally cause major, major impacts to
8 public health or the environment.

9 Now, of course there's exceptions due to gas
10 violations or if there's a breach in a landfill or if
11 there's an injury or a fire, so those are more serious
12 situations. But in general, these are not the kinds of
13 facilities where you would expect egregious releases of
14 hazardous materials or anything like that.

15 CHAIRPERSON MULÉ: Howard, if I could just
16 interject.

17 And isn't that due in part because of the LEAs'
18 monthly inspections?

19 DEPUTY DIRECTOR LEVENSON: That would be our
20 contention that that frequent oversight is one of the
21 things that helps keep facilities in compliance. That
22 back and forth between the operator and the LEA is an
23 important preventive measure that leads to higher
24 compliance rates.

25 CHAIRPERSON MULÉ: Right. Thank you.

1 DEPUTY DIRECTOR LEVENSON: You just stole my next
2 line.

3 CHAIRPERSON MULÉ: Sorry.

4 DEPUTY DIRECTOR LEVENSON: It's true that
5 enforcement is relatively rare, but compliance is high.

6 So we'll skip that.

7 --o0o--

8 DEPUTY DIRECTOR LEVENSON: And one reason that, as
9 you mentioned Ms. Mulé, that compliance is high is that we
10 do work with the LEA and operators on preventing problems
11 from occurring in the first place and trying to get timely
12 compliance when a problem does occur.

13 And this of course relies on us fulfilling our
14 mandate to train LEAs and now to more systematically
15 include operators and on LEAs and Board staff providing
16 field assistance to operators.

17 We've already talked this morning about what we
18 are doing with respect to training, so I won't spend any
19 more time on that.

20 --o0o--

21 DEPUTY DIRECTOR LEVENSON: But nevertheless there
22 are situations in which LEAs do need to take enforcement
23 actions and the types of enforcement actions that are
24 delineated in statute and regulations.

25 Each LEA is required to describe its specific

1 enforcement policies and procedures in what we call its
2 Enforcement Program Plan. It's a specific plan for each
3 LEA that is part of what we review when we certify the
4 LEAs, and we look at that periodically.

5 And of course LEA enforcement actions are reported
6 to the Board, and they are entered into our publicly
7 accessible databases and we, as staff, monitor enforcement
8 actions to ensure that LEAs follow up on specific
9 compliance dates.

10 --o0o--

11 DEPUTY DIRECTOR LEVENSON: The problem, in our
12 view, is often that when enforcement is needed, there's
13 too little -- too little may occur because the tools that
14 LEA and the Board have are limited.

15 Based on the discussions that we've had in the
16 CalePA enforcement working group, our partnership group
17 with LEAs, P&E Committee meetings, Board meetings, and
18 just our general observations, we've identified an initial
19 list of statutory issues related to enforcement and
20 permitting that we'll go over here with you this morning.

21 I want to stress that these are not -- this is not
22 necessarily a comprehensive list. Certainly some of these
23 are controversial, and I'm sure you will hear some
24 comments from the stakeholders today that they don't
25 necessarily agree with some of the ideas in here. And I

1 welcome those comments and, you know, our intent here is
2 to get these issues out on the table for that kind of
3 healthy discussion.

4 So that item certainly does not reflect the
5 opinion of any particular stakeholder and certainly not
6 the Board since you have not acted in a formal manner on
7 any of these.

8 But in particular on the enforcement side, the
9 four general areas that we've identified are insufficient
10 enforcement tools -- and I'll go into these in more
11 detail. Somewhat related is limited ability to address
12 illegal disposal; limited ability of the Board to take
13 direct action, except in certain circumstances; and the
14 appeal process itself.

15 --o0o--

16 DEPUTY DIRECTOR LEVENSON: So let's go through
17 those briefly.

18 Insufficient enforcement tools. We really do not
19 have enough tools for LEAs to use in taking appropriate
20 actions against permitted facilities that are in violation
21 of the Integrated Waste Management Act or against illegal
22 sites and operations.

23 One of the issues is that violations of solid
24 waste laws of the Integrated Waste Management Act are not
25 crimes. So the LEA cannot use criminal penalties in

1 enforcing these provisions, even though criminal
2 enforcement certainly could have a deterrent effect and
3 may be deserved in certain cases.

4 Secondly, there are still limits on the ability to
5 impose administrative civil penalties. AB 1497 did remove
6 what was a \$15,000-a-year annual cap on administrative
7 civil penalties. However, it did not remove some of the
8 other conditions that the LEA must fulfill before imposing
9 a penalty. For example, the LEA cannot impose a civil
10 penalty until compliance -- excuse me, if compliance is
11 not achieved in accordance with a time schedule
12 established as part of a correction action or as part of a
13 cease and desist order. So in other words, the penalty
14 doesn't apply until the wrongdoer fails to achieve
15 compliance.

16 In addition, LEAs do not have the same tools as
17 what are called the certified unified program agencies
18 that under Department of Toxic Substances Control are
19 responsible for regulating the hazardous facilities.
20 CUPAs, as they are known, C-U-P-As, have the ability to
21 issue minor infractions of solid waste requirements. They
22 are non-appealable. They are called administrative
23 enforcement orders for minor violations. They are
24 essentially a ticket or an infraction. LEAs do not have
25 that ability.

1 --o0o--

2 DEPUTY DIRECTOR LEVENSON: So some of the
3 potential changes to address this particular issue are to
4 establish criminal personalities for any violation of the
5 Integrated Waste Management Act or its regulations or
6 permits thereof; provide that penalties apply at the time
7 of the original violation; to broaden the applicability of
8 civil administrative provisions; and to authorize the CUPA
9 model, the administrative enforcement orders, for
10 penalties, for minor violations, which clearly would be
11 difficult to define, but it's something that can be
12 considered.

13 --o0o--

14 DEPUTY DIRECTOR LEVENSON: Related to this I
15 mentioned that we don't have the ability to impose
16 criminal penalties against illegal sites, so this is kind
17 of a blend of -- it's an important enough issue to
18 separate out as its own issue.

19 The current authority of the LEAs and the Board
20 focus is primarily on the owners and the operators of
21 solid waste facilities. We have very limited ability to
22 take action against non-compliers outside that system,
23 especially in instances involving illegal disposal.

24 So potential changes to this are to amend the
25 Integrated Waste Management Act; to prohibit illegal

1 disposal of solid waste; and expand this to persons who
2 are transporting solid for illegal disposal or arranging
3 for illegal disposal or are otherwise in some manner
4 accepting materials for illegal disposal.

5 --o0o--

6 DEPUTY DIRECTOR LEVENSON: A third area -- and the
7 third and fourth areas I think we start to get into a
8 little bit more of the controversial issues here -- is the
9 Waste Board's inability to take direct action.

10 Currently, when we are not acting as the
11 enforcement agency in six jurisdictions, we typically work
12 through the LEA and monitor what kinds of enforcement
13 actions they are taking. And since we rely and train and
14 oversee LEAs to be our primary regular entities involved
15 in these situations, it generally shouldn't be necessary
16 for us to intervene except in very unusual circumstances.

17 In Florin-Perkins, which some of you will recall
18 was a major issue in Sacramento over the last several
19 years, both the Sacramento County LEA and Board staff were
20 very frustrated at the LEA's inability to fully implement
21 its enforcement orders. In this case, we did conclude
22 that LEA was doing all it could and that there was no
23 other way that we could get involved in that situation
24 other than to try to assist them. We couldn't impose a
25 complementary action at the same time. But we certainly

1 felt the LEA was acting appropriately, but they were
2 stymied by the system.

3 In other situations it might be appropriate for us
4 to be more directly and immediately involved.

5 Now, we can -- in emergency -- not in emergency.
6 Let me use the term. If there's a determination that
7 there is an imminent threat, and we determine that the LEA
8 has failed to take an appropriate action, we can consider
9 taking over that particular situation under the reg
10 provisions cited up there, 14 CCR 18350. But that's a
11 very high standard to determine if there's an imminent
12 threat and to make that kind of -- to take that kind of
13 action.

14 We also of course have longer-term solutions which
15 involve the LEA evaluations process and the kind of back
16 and forth that we typically go through with the LEA when
17 we identify a performance issue.

18 But there is no availability for us, when we do
19 see a problem, to kind of issue an enforcement action that
20 complements what the LEA is doing and hopefully adds more
21 weight to the need for operator to comply with that or the
22 entity that enforcement action is taken against.

23 So potential changes that could be considered
24 would be to authorize the Board to take any action that's
25 available to the LEAs, and again principally to complement

1 and to not take over what the LEA is doing, and also to
2 delete the requirement that the LEA first has to request
3 our assistance before we can really step in and deal with
4 some of the closed, illegal, and abandoned sites. So if
5 we see a problem with a site, we can just more directly
6 start working on that.

7 --o0o--

8 In terms of the appeal process, current law
9 certainly provides for, and we are fully aware of, the
10 need for due process. Operators can challenge an
11 enforcement order or any other determination by an LEA by
12 appealing to a local hearing panel or hearing officer.
13 And then if they disagree with that decision of that panel
14 or office, they can appeal to the Board.

15 And we have one of those scheduled in which a
16 citizen's group has appealed a hearing panel order for
17 next week at the board meeting.

18 Until legislation AB 2159 went into effect in
19 2004, statute provided that there was an automatic stay of
20 the effective and enforcement order at any permitted
21 facility, pending completion of all the appeals, unless we
22 can make a determination that there was imminent and
23 substantial threat to public health and safety in the
24 environment.

25 And again, that's a very high standard. That's

1 very difficult to prove.

2 Now, what AB 2159 did is it sped up the process of
3 getting to the first hearing of an appeal, but the
4 automatic stay is still in effect during an appeal in most
5 cases.

6 The local hearing panel process, in our view, is
7 time consuming, it's costly, it may be not needed.
8 "Superfluous" may be a word that some people have a little
9 heartburn over, but ultimately these can go -- these
10 appeals will go to the Board if there's disagreement,
11 since we are the final arbiter, of course subject to
12 review by the courts.

13 So there could be some discussion about potential
14 changes.

15 --o0o--

16 One idea is to eliminate the stay. Of course that
17 is controversial because of the issue of due process.

18 Another is to eliminate the hearing panel and
19 instead provide for appeals directly to the Board so that
20 there is a quicker and final determination made on those
21 issues under appeal.

22 --o0o--

23 DEPUTY DIRECTOR LEVENSON: Just a couple more
24 things.

25 Let me turn now to permitting issues. There have

1 been a number of concerns expressed by various
2 stakeholders and board members about the Board's inability
3 to reject incomplete or incorrect permit applications and
4 about the lack of flexibility in the 60-day clock, what we
5 call a, quote, 60-day clock, unquote.

6 Our permitting process does balance the needs
7 that, we feel, the needs of an applicant for a speedy and
8 cost-effective process with the need for an efficient
9 review and analysis by the LEA staff and by the Board
10 staff regarding potential public health and safety issues
11 before we bring a permit to you for consideration.

12 And most of the review -- the burden for review is
13 on the LEA, and we certainly try to provide training to
14 LEAs and work with them early on how to handle these
15 situations in trying to resolve any issues.

16 However, we do, as staff, still see some permit
17 applications submitted by LEAs that have missing
18 requirements or unresolved issues. And typically, what we
19 do and, as Ms. Peace noted earlier today, we work together
20 as best we can to try and resolve these issues --
21 sometimes in the last week prior to a committee meeting or
22 board meeting so that we have a package that is worthy of
23 your consideration.

24 And all this has to happen, of course, within 60
25 days once we get a proposed permit for consideration. We

1 start the clock the day that it is stamped in by our P&E
2 staff. So due to the timing of board meetings, we may not
3 even have a full 60 days to look at the material that's
4 submitted; we may have 45 days.

5 I think on average the permits submitted in
6 January and February were something -- we had about 44, 45
7 days to look at it.

8 Let's see. A corollary issue, before I get to
9 potential changes, is the sequencing of permits.

10 Some of you will recall AB 1220, which was passed
11 about 1993 or 1994, and that separated a lot of the
12 responsibilities that the Waste Board previously had and
13 talked about the separation of responsibilities with the
14 Water Board and Air Board and other entities.

15 Right now, as a result, AB 1220 essentially allows
16 an owner or operator to determine the order in which they
17 obtain various permits. Permits can be brought to the
18 Board for consideration when no other decision has been
19 made by other agencies on issues such as water or air
20 issues, on permits that will be issued by those entities,
21 either for construction and/or operations. At times the
22 operator may even attempt to obtain a state or regional
23 Water Board permit prior to obtaining local land use
24 approvals.

25 At a minimum, this means that the owner and

1 operator may bring a solid waste facilities permit to us.
2 It may be fine and we may concur in its issuance, but then
3 as a result of other agencies then issuing other permits,
4 they may have to revise their permit and bring it back to
5 us later on.

6 --o0o--

7 DEPUTY DIRECTOR LEVENSON: So the potential
8 changes that could address these permitting issues, there
9 are a number of different variations on these themes.

10 One is to allow us to obtain the necessary
11 information before you consider a permit, specifically by
12 being able to reject a permit application that we view as
13 incomplete or incorrect. And that will be controversial.
14 I'm sure people will be concerned that we might make an
15 arbitrary decision on that. I don't think we would, but I
16 understand their concern.

17 Another is to extend the clock to 75 or 90 days
18 under limited circumstances -- for example, when we do get
19 a permit in and we have to hear it within 30 or 45 days
20 unless we could move it to the next month's board meeting,
21 but not as a general rule, but under these kinds of
22 circumstances.

23 And then certainly one could always revisit the
24 sequencing of permits allowed under AB 1220. That's been
25 a long-standing law, and I only bring it up so that you

1 understand some of the context there.

2 With that, I'm going to stop my presentation.

3 I hope this has provided you with some context on
4 these issues, and we would be happy to answer any
5 questions or hear discussion from the stakeholders and the
6 board members.

7 Thank you.

8 CHAIRPERSON MULÉ: Thank you, Howard. Once again,
9 a very thorough presentation. I really appreciate it.

10 I know that at our December Committee meeting, we
11 did discuss you bringing back an item to discuss the
12 permitting, the permitting time clock issue.

13 And so I really appreciate the thorough discussion
14 that you've just presented to us.

15 We do have several speakers. So I would like for
16 them to come up and speak first. And then we'll take
17 questions, if that's okay with the Committee.

18 With that, our first speaker is Evan Edgar.

19 Good morning.

20 MR. EDGAR: Good morning, Board Members.

21 My name is Evan Edgar. I represent the California
22 Refuse Removal Council.

23 A lot has happened since an audit of 2000. Around
24 that time period there was two large tire fires; we had
25 the Crippens C&D fire; we had mountains of inerts down in

1 Monterey Park; we had some compost odors; and we had some
2 problem landfills.

3 But since 2000 a lot of good has happened that
4 should be recognized as part of this overview. There's
5 been a lot of new regulations and enforcement where the
6 industry has come a long way with regards to addressing
7 audit issues. There have been two new regulatory packages
8 and for composting and for C&D, and enforcement is
9 happening out there.

10 What I fail to see in today's regulatory era,
11 there is no smoking gun, a poster child. There is no
12 smoking compost facilities. I think with the new
13 regulatory tools the LEAs have with new compost regs, and
14 new C&D regs with fire control plans, I believe that the
15 regulations and tools are in place. And the industry has
16 evolved and that we are providing a good recycling and we
17 are providing the diversion numbers in context.

18 We do support the local LEA activity because
19 direct action happens directly at the local level. We
20 believe in a lot of aspects of local control with regards
21 to having the local LEA in place with the tools.

22 I believe training has come a long way with SWANA
23 program and involving the operator with the LEA with Waste
24 Board training and dollars to put it there.

25 I believe over the last five years since the last

1 audit, there is very little criticism out there other than
2 CalEPA, and that's the only criticism we hear. Well, I
3 think that we don't hear from other stakeholders out there
4 in the field or as part of local state government or by
5 the industry.

6 We believe the LEAs are empowered. They're doing
7 a good job and should retain their authority to move
8 forward. With regards to the permitting, our clock starts
9 about three years in advance. You know, when we start the
10 clock, it's not 60 days. You heard from Chip Clements it
11 was three years. George Eowan was five years. I've been
12 involved for five years. My clock starts with an initial
13 use permit and CEQA. And then when we officially have
14 application to the Waste Board and LEA staff, it's 180
15 days. That's another check. And along the way the Waste
16 Board staff has lots of opportunity to comment, and they
17 do, at CEQA, at many levels. There's a lot of opportunity
18 to comment on the pre-application. And I believe that the
19 LEAs and Waste Board staff do get involved with
20 pre-application. The 60-day clock, when it comes up here,
21 there's been a lot of involvement.

22 At one time, the Waste Board has had a voluntary
23 program called the PASS program, Permit Applications
24 Submittal Schedule, that was active until 2002 whereby
25 that 60-day clock was extended to maximum amount period,

1 and they actually had some voluntary dates out there to
2 get maximum staff time.

3 In most cases, the industry obliges that. If you
4 look at the record, I believe that the clock was extended
5 from the average 42 days to average 52 days, something
6 like that. So I believe bringing back a PASS program
7 whereby we have some dates in order to extend this state
8 clock would be great.

9 In summary, I don't see the same criticisms in
10 2006 as what happened in 2000. I don't see the audit. I
11 don't see oversight committees going on with regards to
12 permitting. I believe the troubled landfills have been
13 shut down, and we have the tools in place to do a great
14 job.

15 Thank you.

16 CHAIRPERSON MULÉ: Thank you, Mr. Edgar.

17 Our next speaker is Justin Malan.

18 MR. MALAN: Good morning, Madam Chair, Board
19 Members. Welcome, Board Member Wiggins and Brown.

20 I'm sure you will enjoy this assignment.

21 CHAIRPERSON MULÉ: Good morning.

22 MR. MALAN: Justin Malan with the Local
23 Environmental Health Directors representing most of the
24 LEAs.

25 Briefly, I would just like to thank your staff

1 again. Howard et al have done a great job. I think they
2 have illustrated to you the issues that, if not
3 controversial, will remain topics of discussion and just
4 reflecting on what hard characterizing criticism by
5 CalEPA -- I don't even know if it's criticisms but it's an
6 observation -- and I would like to put in context with
7 Howard being apologetic for the fact that we don't have
8 many enforcement actions, and that is to stress the fact
9 that this program probably has the highest compliance
10 record of any program Local Environmental Health is
11 involved in.

12 We have 12 to 20 different programs -- everything
13 from hazardous material, drinking water, food safety,
14 animal control, whatever you can think of we do at the
15 local level. And this is a model program.

16 And I think particularly for the new members, you
17 will hear people banging the state or banging the Board or
18 banging the LEAs, saying we are not hitting people over
19 the heads with enough 2-by-4s. It quite honestly isn't
20 necessary. It is necessary in some cases, and I would
21 like to urge that the Board take very, very seriously the
22 inefficiency of what we affectionately called the AB 59
23 process, the appeal process for local enforcement.

24 It is inadequate. Our association tried on two
25 occasions, four or five years ago, to do it. We were

1 unsuccessful in modifying the existing cumbersome and
2 costly appeal process. We do need to fix that.

3 I believe with that fixed, most of the other
4 issues may be adequately addressed. And in fixing it we
5 must stress that we are entirely for due process. We are
6 not suggesting we circumvent due process. We are not
7 suggesting we make it faster than it should be. It should
8 just be a process that if you've done something incorrect,
9 if you aren't in compliance with the law, then you stop
10 your activity. You don't have a bunch of lawyers running
11 around, stringing everybody along, ad nauseam, when you
12 know that you've done the wrong thing and both the state
13 and the locals believe that you should be shut down. So
14 that does need to be addressed.

15 I do believe that the administrative enforcement
16 orders by the CUPAs, the hazardous materials program, is a
17 good model to follow. You may not be able to adopt it
18 verbatim, but it's a great model, and it's worked very,
19 very well in that program.

20 Time for the Waste Board to act on permits. I
21 think we could go on ad nauseam on that one. I think some
22 of the operations of the PASS or maybe having a discrete
23 opportunity to extend it a little further if you don't
24 have your full 45 days to review would work. But I think
25 we are all doing our best to get this going as quickly as

1 possible.

2 And I think also to reflect on just this morning,
3 you had five permits in front of you, five good permits,
4 all thumbs up, and despite some to and fro at the last
5 moment, your Board staff recommended consent for approval,
6 and you approved it. So I think the system is working.

7 Finally, revocation of permits if there's illegal
8 dumping. I'm very, very pleased that you've hired one of
9 us, Ken Stuart, to work on the illegal dumping problem.
10 And I'm sure that within the next year or so we're going
11 to lick that problem as well.

12 Just wanted to suggest one thing that LEAs raise,
13 and sometimes they raise it and sometimes you and CalEPA
14 don't hear this. And that is one of the reasons we don't
15 go gangbuster and close down a facility is that there are
16 sometimes more public health benefits keeping it open. It
17 is a sanitary landfill. And it's better to have the stuff
18 in a sanitary landfill than it is on the curbside or in
19 someone's backyard. So the inability or the reluctance of
20 an LEA to act at your whim or at your command is sometimes
21 good reason.

22 And also it may not be best to simply revoke a
23 permit or close down a facility, if they are operating
24 illegally. In most cases it probably is, and we support
25 you 100 percent, but be aware that there are circumstances

1 where the local jurisdiction is going to make and
2 determine that it's better to get the stuff in a landfill
3 than it is to leave it lying around the yard.

4 Thank you very much.

5 CHAIRPERSON MULÉ: Thank you, Justin.

6 Our next speaker is Greg Pirie.

7 MR. PIRIE: Good morning, Chair, and Committee
8 Members.

9 CHAIRPERSON MULÉ: Good morning.

10 MR. PIRIE: Napa County Local Enforcement Agency,
11 and also a member of the Enforcement Advisory Council.

12 I just think we need to -- there's a lot of
13 information in this agenda item. A lot. I know in
14 talking to a few LEAs, they would like to be here, but
15 didn't have enough time to make plans to come all the way
16 to Sacramento.

17 And there's also a lot of groups including
18 Enforcement Advisory Council that has a good relationship
19 that between board staff and the board to be able to take
20 items like this, review them, go back and forth between
21 the board and the staff and come up with solutions.

22 Enforcement Advisory Council includes LEAs, CCDH
23 representatives, the health officer. So even though
24 there's a lot of information here, any actions you may
25 take, please include us in all your review, as you have

1 been doing now.

2 And of course LEAs are certified throughout the
3 state. It's not an easy process to get certified, but
4 once you are certified, you're being reviewed every few
5 years. There's a lot of questions and comments that come
6 to you through the operators and the landfills transfer
7 stations, MRFs. So when there's a permit coming before
8 you, you know, a lot of times we're sitting down with
9 obviously owners and operators years in advance. And
10 especially in terms of enforcement, you know, there's
11 always the difference between the getting compliance and
12 everybody saying no, we need to have fines. Where are the
13 fines at?

14 Well, my experiences, most of the times where I
15 have the best compliance, I have been able to see an
16 operator, you know, every month, every month inspections
17 we're seeing them, we're saying, What do you need? What
18 do you need to do from us? How do we go from the permit
19 process to where once you are finally getting the permit
20 to the Board?

21 You have been working with them so long that you
22 know exactly what the process is, how it should go, what
23 should be in the permits, so the locals have the best idea
24 of the whole dynamics, whether it's CEQA, the permit, or
25 the site, they know the whole dynamics. So once it comes

1 up here, there's a lot of questions -- I wouldn't say have
2 two agencies approving permits and denying permits.
3 Believe a lot of the decisions are with the locals is
4 where they are at now.

5 A lot of times, just in communication and
6 enforcement, you will have more operators coming to me
7 where they see me so often, if they have a problem with
8 their site, they want to solve it, they are going to come
9 to me first and know that I'm not going to fine them right
10 away or issue a citation, but how can we work and get
11 through the process.

12 So as long as you have that communication going,
13 you're going to have a lot of compliance, so don't have
14 the misnomer that if you don't have fines and you don't
15 see the money flow, that things aren't going right.

16 I definitely agree on the appeals process, and
17 enforcement definitely needs an overhaul. And we are
18 working with that now in a lot of the working groups, and
19 we definitely continue to be able to do that. It is true
20 that, you know, sometimes I'll look at an issue to where
21 we have an enforcement problem -- or not an enforcement
22 problem yet, but it could be -- to where is it worth going
23 through the process knowing it could be stalemated with an
24 appeal. Sometimes it's easier to go through some of the
25 local ordinances with solid waste and hauling than it is

1 with some of the enforcement criteria to where it would be
2 with the CalEPA agencies.

3 And with the permits, I definitely want to stress,
4 there is some language in the agenda item that talks about
5 possible legislative changes -- you know, some of the LEA
6 duties going to the Waste Board. If we get -- I think
7 that may not be necessary. If we could actually get to
8 the problems, know what the problems are, and solve the
9 problems; if we knew which areas with the LEA were
10 deficient; if we knew which areas of the Board staff were
11 deficient that weren't working correctly; if we know those
12 and solve those, I think a lot of the issues that talk
13 about legislative changes are not going to be there.

14 And obviously with EAC, any group would be happy
15 to talk about that, coming into conclusions as we are now.

16 That's most of my notes.

17 So I know there's a lot of LEAs that would
18 definitely like to be here that can't.

19 If you have any questions of the LEAs, definitely
20 let us know. That's what we're here for.

21 Thanks.

22 CHAIRPERSON MULÉ: Thank you, Greg.

23 Our next speaker is Lori Braunesreither. I hope I
24 pronounce that properly, Lori.

25 MS. BRAUNESREITHER: Good morning.

1 CHAIRPERSON MULÉ: Good morning.

2 MS. BRAUNESREITHER: My name is Lori
3 Braunesreither. I'm with the Contra Costa County LEA.

4 And after reviewing this report, I just wanted to
5 give an LEA's perspective and from how we have found
6 things to work for us.

7 The first item is dealing with the enforcement
8 tools. Definitely enforcement should stay at the local
9 level, because we're the ones who are out there every
10 month; we are the ones who are talking to the operators,
11 who are aware of what's going on at the sites. We have
12 built a rapport with the operators where actually with my
13 operator when he goes out to do a self-inspection, he
14 finds things that are wrong and he knows that I'm going to
15 point out to him. He says, "Oh, Lori's going to say
16 something about this," so he writes up a work plan to
17 address it before I even get out there to do my
18 inspection.

19 I'm very fortunate that my operator works that way
20 with me.

21 I know there are other LEAs out there who don't
22 have that luxury of having that nice working relationship,
23 and in those cases they may need a little teeth in their
24 enforcement action in order to get compliance.

25 I've done noticing order in the past. And by the

1 time you get through the whole process, first you have to
2 build the case. Then once you have built the case, then
3 you write -- you meet with the operator. Then you write
4 and issue the Notice and Order. They are given an
5 opportunity to comply. And I've rarely heard of anybody
6 say that they didn't get compliance up to that point. So,
7 you know, we get the compliance we need without having to
8 do the hardcore enforcement.

9 Again, there are other LEAs out there who don't
10 have the luxury that I have with my operator, who may need
11 to have those teeth to do that. Let's see.

12 Dealing with the hearing panel process and the
13 appeal process. In the notes or in the report it talked
14 about giving the hearing panel to the Waste Board. That
15 is one instance where I think I agree with that. Most of
16 us at the local level when we have our hearing panel, ours
17 is the board of supervisors. And it's rare that you would
18 have someone on the board of supervisors who understands
19 what the solid waste regulations are; understand what we
20 do as the LEA and do under enforcement and permitting.

21 So that may be a good issue to have it come
22 directly to the Board. And then that way have a concise
23 decision made on that appeal. Make that process go a lot
24 faster, and you have people who actually know what's going
25 on, hearing the issues.

1 Let's see. Other enforcement. I had down here
2 just as an informational thing with the Board staff, we
3 have times where Board staff actually come down to the
4 LEAs to get training on how to do enforcement. They come
5 down. I've taken several new LEAs -- new Waste Board
6 inspection folks out to train them on how to do
7 inspections; what to look for; why I'm not writing a
8 violation or area of concern for something; explaining the
9 big picture of the inspection; and what to look for when
10 they go out there.

11 So again having the enforcement at the local level
12 instead of at the state level, again because we know
13 what's going on out there, and we're also providing
14 training. I've also provided training for other LEAs
15 around Contra Costa County.

16 Santa Clara County has sent people out to get
17 training to see how I do an inspection at a landfill.
18 Again, just to give you another perspective of what's
19 happening out there.

20 And then the other item I want to talk to you is
21 about the action on permits. In general, I think the LEAs
22 try to give the Board staff as much time as they possible
23 can to review the documents. We try to give them their
24 entire 60 days. Sometimes there will be snags that will
25 happen.

1 We recently had -- the landfill was closing, we
2 need to get the transfer station permitted. The landfill
3 was closing as of January 31st. Thank goodness the Water
4 Board extended them a few more months, otherwise the
5 permit that approved today would have been issued after
6 the landfill closed and we would have had a month of where
7 were they going to take the garbage. So in that case, we
8 try to get it through as much as we can.

9 Also, during the solid waste facility permit CEQA
10 training that Mark de Bie and I went around the state
11 conducting this last year, I tried to share some of my
12 experiences on doing the permitting process in order to
13 help that time clock along. And part of that was, first
14 of all, talking to the operator, find out what they want
15 to do, and then I always encourage our operator to get all
16 the permits before he comes to us. That way, it's slam
17 dunk, we go straight through. We don't have to be late on
18 CEQA. We have another agency who's more experienced like
19 the planning departments on doing CEQA. They can do that.
20 We do our responsible agency part. It gets done.

21 So then by the time it's time for them to come to
22 us, we've already been working with them informally on
23 draft of their documents of their reported facility
24 information of the proposed permit of their application
25 package. We've done everything in draft, building up to

1 the time when it needs to go in front of the Waste Board
2 for concurrence and consent.

3 So when we do that, we actually talk with the
4 operator saying, okay, what Board meeting do you want this
5 permit to be approved at? And then we time that and ask
6 the Waste Board staff, okay, when do you need to have your
7 report to the board? What is your deadline? And then we
8 go back from there, dealing with when the official package
9 should be deleted or should be submitted, going back to,
10 okay, then when should the LEA get the official package,
11 when should we get the -- again, looking at that timeframe
12 and going back.

13 As part of your training, this is what I've been
14 trying to encourage everyone today. It takes care of all
15 the little detailed stuff, because going through these
16 documents takes a great deal of time.

17 The LEAs are very detail oriented when we do our
18 reports and review of the reports and put everything
19 together for permitting so that by the time it comes to
20 the Waste Board, everything is in order for them and
21 things should go smoothly.

22 Again, there are occasions where that doesn't
23 quite happen, but if we encourage this of all LEAs, this
24 is one system that worked.

25 Another system that has worked in addition to this

1 is that we find out from our Board staff person, when can
2 we -- when do you need to have a final draft so you can
3 start reviewing this before we get an initial application
4 package? So the Board staff has already begun their
5 evaluation, again, helping them to stay within that 60-day
6 time line after the official package is submitted. We
7 have run into other problems, though, with meeting the
8 timeframes, and we hear a lot of the times saying, well
9 the LEA didn't do this and the LEAs don't do that.

10 Sorry, Board staff. But I have some examples of
11 where it didn't work with the Board staff, where we had
12 Board staff members on vacation and said, Well, why didn't
13 you send that to us? Well, we did. You were on vacation.
14 You didn't read it.

15 We've had questions where we didn't think they had
16 reviewed the documents. They would call us, asking us
17 questions. Well, where is this? You know, why isn't this
18 covered? And we will go, yes, it is covered. It's on
19 page so and so of the document. And they go, Oh, yeah.
20 So you know, we have a lot of that coming on.

21 Some of the CEQA reviews, we will have comments
22 coming back on CEQA reviews where the Board CEQA staff
23 will say, Where is this? You can't do this. It's not
24 covered in CEQA. And specially on this last permit, I
25 said "Well, open up the CEQA document to Page 2-8. Here

1 it is at the top of the page that says this has been
2 addressed to CEQA."

3 So it's a give and take. We all have our
4 mistakes. I make mistakes too. Or I -- you know, we do
5 the best we can, but it's a two-way street. And I don't
6 know if you hear about that from the LEAs because we tend
7 not to complain to the full Board. We complain to our
8 permit people at the Waste Board. We complain to Mark.
9 We complain to Mary, whoever, you know, and we talk with
10 them and try to work it out that way informally.

11 But I do see sometimes where when reading some of
12 the reports today, they point to the LEA and it's not just
13 the LEA.

14 And I think that's all I really wanted to say and
15 address today.

16 Thank you.

17 CHAIRPERSON MULÉ: Thank you. Thank you, Lori.

18 Our final speaker is Scott Smithline.

19 MR. SMITHLINE: Good morning, Madam Chair and
20 Chairperson, Committee Members, and Board Member Brown.

21 I'm Scott Smithline with the environmental group,
22 Californians Against Waste, and I'll be very brief.

23 I would just like to say that we support this
24 staff effort. We think it's very important to reassess
25 both the effectiveness of the Waste Board's enforcement as

1 well as the authority to enforce.

2 California Against Waste has in the past tried to
3 be a part of the effort to change some of the these --
4 work on some of these issues. And frankly, we haven't
5 been that successful, so I welcome the fact that this
6 issue is ongoing.

7 Primarily, I would like to address the
8 insufficient enforcement tools slide, specifically the
9 fact that the Waste Board can only enforce a penalty after
10 the operator has -- I'm quoting now from the slide --
11 "failed to achieve a compliance schedule."

12 Having worked for other environmental, frankly,
13 enforcement firms in the past and enforced Clean Water Act
14 and Clean Air Act statutes, this is really a departure
15 from environmental statutes.

16 For instance, if you have Clean Water Act permit,
17 an MPDS permit or a general storm water and discharge
18 permit and you violate that permit, you can be liable for
19 fines of up to \$10,000 per fine per day. They don't
20 initiate a compliance schedule. They don't catch you in a
21 fine and then say, "Well, all right. We've caught you so
22 now you have to change the way you are doing it, and then
23 after you don't do that, we are going to fine you."

24 That's just not how it operates. And I've never,
25 frankly, understood the justification for this particular

1 methodology and I think that's worth reviewing.

2 With respect, again, to the appeals process, it's
3 really a similar issue. I don't really understand the
4 justification for the presumption that's built into this
5 appeals process. It makes sense that if the LEA fines you
6 operating a solid waste facility permit without a
7 permit -- I'm sorry, solid waste facility without a permit
8 to operate that, that you cease and desist until such time
9 that that's rectified.

10 Now, perhaps there would be an opportunity to
11 shift that burden back if the operator had some compelling
12 reason or some proof as to why they should be able to
13 continue to operate, but certainly I think the presumption
14 is actually on the wrong side there.

15 And finally, with respect to the very last slide,
16 you know, the Board has historically had a limited ability
17 to reject solid waste facility permits. I think that's
18 another issue that's worth reviewing, and if you look at
19 the, you know, this report actually references -- the
20 State Auditor Report, the 2000 report. On Page 24, the
21 recommendations, actually -- one of them is to
22 specifically -- I will just read it. It's really short.

23 "The Board should seek legislative authority to
24 object to permit proposals if environmental justice
25 concerns exist."

1 I would say that's one example of why the Board
2 should have the authority to reject a permit. That may
3 not be the only reason, but I think that's a good one. So
4 again, we support this item.

5 And thank you for your time.

6 CHAIRPERSON MULÉ: Thank you, Scott. Appreciate
7 it.

8 I'm sure there are lots of questions.

9 Yes. Go ahead, Board Member Wiggins.

10 COMMITTEE MEMBER WIGGINS: Well, my question is
11 that since the LEAs have the same enforcement ability as
12 the Board, and the enforcement has been seen as being
13 insufficient, in some cases, why aren't we able to change
14 the statutes to provide better enforcement?

15 DEPUTY DIRECTOR LEVENSON: All I can say at this
16 point, Ms. Wiggins, is that that's one of the reasons why
17 we had this item was to have this discussion out in public
18 so people could at least see what the suite of issues has
19 been.

20 We have, as a couple of the speakers have
21 indicated, they have tried to work with the legislature to
22 move different bills that address some of the these
23 issues. We have worked with agency through our normal
24 process to try and effect some of these changes, and to
25 date we simply haven't gotten enough consensus on some of

1 the these. But ...

2 COMMITTEE MEMBER WIGGINS: Where is the consensus
3 needed?

4 DEPUTY DIRECTOR LEVENSON: Pardon?

5 COMMITTEE MEMBER WIGGINS: Where is the consensus
6 needed?

7 DEPUTY DIRECTOR LEVENSON: Where is the
8 consensus --

9 COMMITTEE MEMBER WIGGINS: Who isn't consenting?

10 DEPUTY DIRECTOR LEVENSON: Well, I think you can
11 see from some of the responses you got even today -- and
12 only a few people spoke -- there are differences of
13 opinion certainly on the appeal process and how that
14 should -- or should it be fixed and if so, how should it
15 be fixed.

16 We have our own ideas that we have tried to
17 express in the item, but that doesn't reflect all the
18 stakeholders.

19 On the issue of enforcement tools, I do want to
20 make it clear that what we are talking about here is
21 providing additional tools to the LEAs. And virtually all
22 the instances cited here, not taking over any enforcement,
23 except in one issue that we discussed. But really we are
24 talking -- concerned here about providing more enforcement
25 tools so in those cases where there is the need, LEAs do

1 have more ability to take enforcement action.

2 I didn't see -- I didn't hear a lot of dissent
3 from that, although I will note Mr. Edgar did say he felt
4 that the tools were sufficient. On each one of these
5 issues, there are a few people or a few parties who don't
6 necessarily agree with that one particular direction.

7 We do feel that there is in general, based -- and
8 again, a lot of this is based on discussions on the
9 enforcement part of this, on discussions that we have had
10 with the LEA working group, that there is a need for more
11 enforcement tools in general. There is also, I think,
12 amongst -- at least among LEAs and the Waste Board staff,
13 a general consensus that the appeal process has been
14 problematic, but as you've heard, there are concerns from
15 others about how to fix that.

16 COMMITTEE MEMBER WIGGINS: Well, why isn't the
17 Board taking the lead on this, if we're supposedly doing
18 the right thing?

19 DEPUTY DIRECTOR LEVENSON: Well, I think the Board
20 has taken the lead in terms of trying to identify these
21 issues and work through your normal administrative
22 channels to try and get some of these ideas brought forth.

23 COMMITTEE MEMBER WIGGINS: And normal
24 administrative channels are what?

25 DEPUTY DIRECTOR LEVENSON: Working through our

1 legislative office and forwarding legislative proposals up
2 through CalePA.

3 COMMITTEE MEMBER WIGGINS: And from there it goes
4 where?

5 DEPUTY DIRECTOR LEVENSON: If it's approved, I
6 believe it goes to the governor's office.

7 COMMITTEE MEMBER WIGGINS: Well, is the governor
8 supporting stronger enforcement?

9 DEPUTY DIRECTOR LEVENSON: We are part of the
10 administration and that's the procedure the staff has to
11 follow. The governor has, in general -- it's the general
12 legislative process. But with respect to enforcement, the
13 governor has put forth a plank in his environmental action
14 plan for stronger enforcement. But no matter what the
15 legislative proposal is, we do have an established
16 procedure that we, as staff, have to work through.

17 CHAIRPERSON MULÉ: But Howard, haven't we brought
18 forth some of these items before and they have gotten as
19 far as -- they have gotten to the legislature
20 assemblywoman, Former Assemblywoman Wiggins, and my
21 understanding though is that they were inserted into bills
22 that for one reason or another did not get passed; is that
23 correct? That's my understanding.

24 DEPUTY DIRECTOR LEVENSON: Some of the provisions
25 related to the permitting process have reached bill

1 status. Also the appeal process was certainly discussed
2 as part of AB 2159 several years ago. There were a lot of
3 discussions at that point on that particular bill about
4 additional changes, some of which are included in this
5 item today, but those weren't taken up by the legislature.

6 COMMITTEE MEMBER WIGGINS: Well, tomorrow's
7 another day.

8 CHAIRPERSON MULÉ: That's why we're here. That's
9 why we're having this discussion.

10 COMMITTEE MEMBER WIGGINS: I have another question
11 about why the Board is unable to reject an incomplete
12 permit application. Why is that?

13 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
14 I'll take a stab at that one.

15 Mark de Bie with Permitting and Inspection Branch.

16 Per the statute, the Board's role in the permit
17 process begins when we receive a proposed permit from the
18 local enforcement agency. That proposed permit has been
19 defined as being the actual document that the local
20 enforcement agency writes. That would include all the
21 conditions, restrictions, etc.

22 The LEA, the local enforcement agency, bases that
23 permit on an application package that they review and
24 determine whether it's complete and correct. They must
25 provide to the Board a certification that they have found

1 that package to be complete and correct. And that's the
2 only item in our list that we review to determine if it's
3 present or not present.

4 So in effect, we don't -- the Board does not have
5 the direct ability to utilize a finding, relative to
6 complete and correct that it may generate, in its process.
7 It can only determine whether the LEA determined the
8 package to be complete and correct and whether that's
9 present or not.

10 So it's that balance between state and local
11 review of authority where the responsibility is given to
12 the LEA to determine completeness, correctness of the
13 application.

14 The Board is only to determine whether they made a
15 finding in that regard.

16 COMMITTEE MEMBER WIGGINS: Whether the LEA --

17 PERMITTING & INSPECTION BRANCH MANAGER de BIE:
18 Whether the LEA.

19 And so what we have found is at times Board staff
20 will have a difference of opinion on whether that
21 application really was complete and correct.

22 COMMITTEE MEMBER WIGGINS: Okay.

23 CHAIRPERSON MULÉ: Board Member Peace?

24 COMMITTEE MEMBER PEACE: I was just going to say
25 that is something that's been frustrating to all of us

1 since we've been on the Board is how can we not -- how can
2 we -- is how can we not --

3 COMMITTEE MEMBER WIGGINS: Well, I'm new.

4 COMMITTEE MEMBER PEACE: Yeah. I'm glad you bring
5 it up. It's been brought up again because it has
6 frustrated all of us that we can't turn back a permit that
7 we don't feel is complete.

8 CHAIRPERSON MULÉ: Do we have any further
9 questions? Comments? Discussions?

10 Well, Howard, again, I want to thank you for, you
11 know, an excellent presentation, very thorough and
12 comprehensive and there is a lot of -- a number of issues
13 that are out there that as we mentioned, we've attempted
14 to address in the past. And we'll continue to take a look
15 at those, and again I encourage all of our stakeholders to
16 work with us in looking at these issues, because they are
17 important issues and they do impact how we conduct our
18 business up here at the Board.

19 COMMITTEE MEMBER PEACE: I was going to say, a lot
20 of these things have been things we're discussing at least
21 for the three years that I have been here.

22 But what is the next step? What do we do now?

23 DEPUTY DIRECTOR LEVENSON: Well, as staff, again,
24 as I noted before, our normal and approved course of
25 action is to submit legislative concepts through our

1 legislative office, and we have and we will continue to do
2 so.

3 COMMITTEE MEMBER PEACE: Try to find a vehicle
4 over in the legislature and drop it in and see how far it
5 gets.

6 CHAIRPERSON MULÉ: Okay.
7 Is there any other discussion on this item?
8 Okay.

9 Is there any further public comment?
10 Seeing none, this meeting is adjourned.
11 Thank you all very much.

12 (Thereupon the California Integrated Waste
13 Management Board, Permitting and Enforcement
14 Committee meeting adjourned at 12:07 p.m.)
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1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. KENYON, a Certified Shorthand
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that
5 the foregoing California Integrated Waste Management
6 Board, Permitting and Enforcement Committee meeting was
7 reported in shorthand by me, Kathryn S. Kenyon, a
8 Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said workshop nor in
12 any way interested in the outcome of said workshop.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 21st day of February, 2006.

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23 KATHRYN S. KENYON, CSR

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